

United States 1082  
**Circuit Court of Appeals**  
**For the Ninth Circuit.**

ISABELLE GARWOOD,

Plaintiff in Error,

vs.

JOSEPH SCHEIBER, MAURICE SCHEIBER and JOHN SCHEIBER,

Defendants in Error.

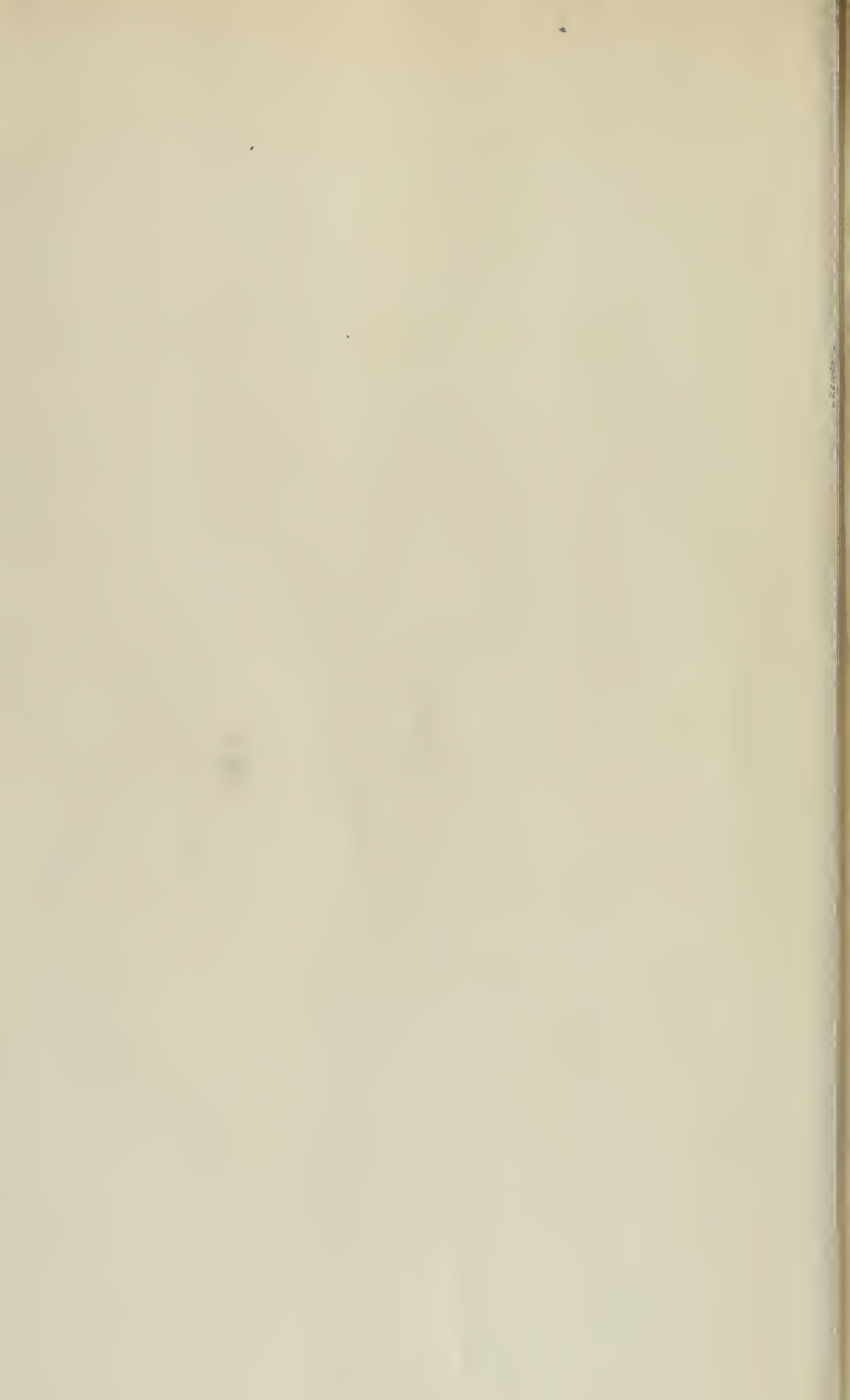
**Transcript of Record.**

Upon Writ of Error to the Southern Division of the  
United States District Court of the  
Northern District of California,  
Second Division.

**Filed**

JAN 25 1917

**F. D. Monckton,**  
Clerk.



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Circuit Court of Appeals  
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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*In the District Court of the United States for the  
Northern District of California.*

No. —.

ISABELLE GARWOOD,

Plaintiff,

vs.

JOSEPH SCHEIBER and FRANCES SCHEI-  
BER (His Wife), MORRIS SCHEIBER  
and EMMA SCHEIBER (His Wife), and  
JOHN SCHEIBER and ANNA SCHEIBER  
(His Wife),

Defendants.

**Complaint.**

To the Honorable Judges of the District Court of  
the United States for the Northern District of  
California:

Plaintiff above named alleges that her full name  
is Isabelle Garwood; and that she is an unmarried  
woman, and is a citizen of the State of New York,  
United States of America; and, for cause of action,  
against the above-named defendants, plaintiff fur-  
ther alleges:

I.

That defendants Joseph Scheiber and Morris  
Scheiber and John Scheiber are citizens and subjects  
of a foreign State,—are citizens and subjects of an  
European State, to wit, Switzerland.

II.

That during all the times herein mentioned, prior  
to the 1st day of November, 1911, the above-named  
defendants were the owners of and in the actual  
and peaceable possession of all of that certain land  
and premises and improvements thereon, situated



in the county of Sutter, State of California, and more particularly described as follows, to wit:

Beginning at a point on the left bank of the Feather River fifteen chains and eighty (15.80) links below the southwest corner of the so-called Nicolaus Allgier Tract; running thence down stream following the meanderings of said river to the point where the western boundary line of lot two (2) of the New Helvetia Rancho intersects said river; thence south fifteen ( $15^{\circ}$ ) degrees and eight (8') minutes east, following said boundary line fourteen chains and forty-four (14.44) links; thence south sixty-four ( $64^{\circ}$ ) degrees east six chains and forty-four (6.44) links; thence south seventy-eight ( $78^{\circ}$ ) degrees and thirty minutes (30') east twenty-four chains and fourteen (24.14) links; thence south fourteen ( $14^{\circ}$ ) degrees and thirty (30') minutes west, fifteen chains and ninety (15.90) links; [1\*] thence south forty degrees ( $40^{\circ}$ ) east forty-eight chains and seventy (48.70) links; thence east two chains and forty-five (2.45) links; thence north fifty ( $50^{\circ}$ ) degrees east thirty-eight chains and eleven (38.11) links to a point on the extended rear line of said Nicolaus Allgier Tract, fifteen chains and eight (15.08) links distant from the south-east corner of the same; and thence north thirty-nine ( $39^{\circ}$ ) degrees and thirty-six (36') minutes west eighty (80) chains to the

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\*Page-number appearing at foot of page of original certified Transcript of Record.



place of beginning. Also the northeasterly quarter of Section twenty-four (24) in Township Twelve (12) North, Range Three (3) East, Mount Diablo Base and Meridian, the whole containing six hundred (600) acres of land, more or less, and being the whole of the so-called Nicolaus Allgier Ranch, situated below the town of Nicolaus, bounded on the east side by the farms of P. Straugh and Phil R. Drescher, on the north by the Redfield farm, and on the west by the Feather River, and on the south by the farms of Claus Peters and John Schwall, and being the same land described in a deed recorded in the office of the County Recorder of Sutter County, California, in Book 46 of Deeds, at page 23, Sutter County Records.

### III.

That for some months prior to said 1st day of November, 1911, the said above-named defendants had been and were desirous of selling said hereinbefore-described land, and had, as plaintiff is informed and believes, entered into an agreement with certain agents who were to sell said land, and to be paid a commission therefor; that said agents with whom defendants contracted were one Harry K. Brown, and also one U. L. Dike and one A. L. Crane; the said U. L. Dike and A. L. Crane were at that time doing business under the firm name and style of California Colonization Company, Incorporated.

### IV.

That some few days prior to the 20th day of September, 1911, plaintiff went to the office of said real

estate concern, California Colonization Company, in the city of Sacramento, for the purpose of investigating the possibility of purchasing some land; that at said office she met the said above-named members of said firm and company and they told her of some land holdings in the Sacramento Valley, which they had for sale, and plaintiff then and there informed said members of said real estate firm and company that she had no experience in reference to land of any kind, and that she would not trust her own judgment in the [2] purchase of any real estate; that she had a friend, Dr. F. I. Ramos, who would arrive in Sacramento within a few days, and that she placed implicit confidence in his judgment, and that he would have to be present before she would seriously consider the matter of purchasing property; that on or about the 19th day of September, 1911, the said Dr. F. I. Ramos arrived in Sacramento; that said Dr. F. I. Ramos and plaintiff were at that time engaged to be married; that the said F. I. Ramos was a man fifty years of age and of extensive education and experience, and plaintiff placed complete confidence and reliance upon his judgment and suggestions in matters of a business character.

That plaintiff, upon the arrival of the said Dr. F. I. Ramos told him that she was thinking of investing some five or six thousand dollars in land in the Sacramento Valley and requested him to go with her to the office of said California Colonization Company for the purpose of seeing what they had for sale; that upon the day following the arrival of said F. I.

Ramos in Sacramento, that is, on or about the 20th day of September, 1911, plaintiff accompanied by said F. I. Ramos, went to the office of said agents of said defendants, said U. L. Dike and said A. L. Crane, doing business under the name and style of California Colonization Company, and introduced the said F. I. Ramos to said U. L. Dike and A. L. Crane, and told them that he was her friend and adviser, and that she relied upon his judgment; that very shortly after being introduced to said F. I. Ramos, said agents of defendants, said U. L. Dike and said A. L. Crane had a private interview with said F. I. Ramos and offered to said Ramos a valuable consideration to put in his own private pocket if he would use the trust and confidence imposed in him by plaintiff to the purpose of inducing plaintiff to buy certain real estate which they wanted to sell; that said F. I. Ramos was unscrupulous and dishonest, although that fact was not at that time known to plaintiff; and the said F. I. Ramos and the said agents, U. L. Dike and A. L. Crane, thereupon entered into a secret understanding unknown to plaintiff to the [3] effect that said Ramos was to receive fifteen hundred dollars in the event that he should persuade plaintiff to buy said hereinbefore mentioned and described property.

#### V.

That upon the 21st day of September, 1911, plaintiff was prevailed upon by said agents to visit said property, and upon said day she went with said U. L. Dike and said F. I. Ramos in an automobile to the said property; that this visit and one subsequent

visit, on September 30th, 1911, were the only times and occasions when plaintiff saw said property before purchasing the same, and upon each of said two occasions when visiting said property plaintiff was suffering from a sprained ankle; and said sprained ankle was sore and painful to such a degree that it was impossible for plaintiff to walk more than a few feet at a time, and such injury made it impossible for plaintiff to walk over or carefully examine said land; that plaintiff, while at said ranch, inquired of said defendants as to the boundaries of said property and asked them to tell her where said ranch extended to, and Morris Scheiber pointed to the levee on the east bank of the Feather River, and called plaintiff's attention to the same, and stated that the western boundary of said ranch ran along said levee northward to a point near a white house, and from there eastward along a certain fence which he indicated to a point beyond a grove of oak trees, which he also indicated, and from there in a general southerly direction; and thence at right angles back in a westerly direction to the levee on the river bank; that the expanse which he indicated and showed to plaintiff was clear and level land, and said defendant, Morris Scheiber then and there represented to plaintiff that said six hundred acres were all clear, level land identically the same as that directly about them where they stood; that said defendants and defendants' agents, in dealing with plaintiff and enticing plaintiff to purchase said land at all times represented to plaintiff that said place contained six hundred acres of clear, arable land, and represented that two hun-

dred and fifty of said acres were under [4] cultivation and growing alfalfa, and said agents informed, advised and represented to plaintiff that said ranch consisted of six hundred acres of the finest alfalfa land in the State of California, and that she could buy the same for one hundred and twenty-five dollars per acre; that there were six hundred acres, which would be an even \$75,000, all of which plaintiff then and there and at all times believed; that plaintiff herein is and was at all times herein mentioned completely ignorant and absolutely inexperienced as to land or real estate, and at the time of said purchase knew absolutely nothing of real estate values and knew nothing of farming, and is and was without business training or experience, and plaintiff in purchasing said land relied solely upon the counsel, statements and advice of said defendants and defendants' agents, U. L. Dike, A. L. Crane, F. I. Ramos, and also one Clinton White; that at the time of said negotiations she had never had any experience whatever with land of any kind, and had never purchased any real estate, and when she was shown the said land by said defendants, and when said defendants pointed out what they told her were boundaries of said land, plaintiff was unable to judge of the quantity of land, or of the number of acres which were within said boundaries as they were indicated to her by said defendant Morris Scheiber.

#### VI.

That plaintiff regarded defendants and their said agents, U. L. Dike, A. L. Crane, F. I. Ramson and said Clinton White as honorable and honest men,



and she had no reason to mistrust them or misbelieve their statements in reference to said land, and she then and there and at all times believed that said six hundred acres were all clear and level and were contained within the boundaries as pointed out by said Morris Scheiber, and that there were on said level expanse which said Morris Scheiber had pointed out to her six hundred acres as they then and there claimed, and that, as the area pointed out to her appeared, it was all level, clear and ready to cultivate; that at said time all of said defendants and defendants' [5] agents were all aware of plaintiff's ignorance and inexperience in reference to real estate, and at all times were well aware of the fact that plaintiff was laboring under a misapprehension as to the character and condition of said land, and defendants knew that she was ignorant of the fact that one hundred and fifty of said six hundred acres were outside the levee and were unfit and unadapted to the raising of alfalfa, and that said one hundred and fifty acres lying outside the levee were practically worthless.

## VII.

That while said negotiations herein mentioned were pending, plaintiff told the said U. L. Dike and said A. L. Crane that she was a stranger in Sacramento and that she felt that she should have the advice of a capable lawyer to look after her side of the deal, to the end that there might not be any slip in technical or legal matters, and said U. L. Dike and A. L. Crane advised plaintiff to go to the said Clinton White, hereinbefore mentioned, and stated to

plaintiff that said Clinton White was the ablest lawyer in Sacramento; that plaintiff went to said Clinton White and employed his service to represent her in the matter of said deal, and said Clinton White took up for plaintiff the matter of said deal, and plaintiff then and there assumed and believed that the said Clinton White was in her employ and was acting as her attorney and for her best interests; that before she actually purchased said property, to wit, on or about the 25th day of September, 1911, plaintiff signed an agreement to purchase said property, and in said agreement to purchase said land was represented as "six hundred acres more or less"; that plaintiff asked the said Clinton White what the words "more or less" meant and told the said Clinton White that it was her understanding that she was buying six hundred acres of the finest alfalfa land in the State of California, and in reply to this the said Clinton White stated to and told plaintiff that that was what the agreement meant, and that the words "more or less" were simply a law term;

That after said deal was consummated plaintiff went to said [6] Clinton White, and asked what his charges were, and said Clinton White dismissed the subject with some evasive reply, and said: "Oh, your bill will come along in good time" and upon information and belief plaintiff alleges that said Clinton White was paid money by said defendants and their said agents for helping them to consummate said sale, and for furthering their ends and interests by quieting any fears or objections of plaintiff in the matter of said transaction and for encouraging her

to purchase said property; and that the said Clinton White did this while pretending to plaintiff to be her lawyer and while pretending to plaintiff to be looking out for her interests, and while in truth and in fact he was in the employ and was actually paid by defendants to look out for their interests as against the interests of plaintiff, and that he was in truth and in fact the lawyer for the vendors in said transaction, and looked after their interests and did not look after the interests of plaintiff.

### VIII.

That said F. I. Ramos, in pursuance of the said underhanded, dishonest and treacherous agreement which he, without the knowledge of plaintiff, had entered into with said U. L. Dike and A. L. Crane, influenced, advised, and persuaded plaintiff to buy the said property, and told plaintiff that she would within a short time be able to make a great deal of money out of said property by cutting up said six hundred acres of land and selling it as small farms; and plaintiff then and there believed the said F. I. Ramos; and upon the judgment and advice of the said F. I. Ramos, and upon the statements and representations of said defendants and said U. L. Dike and said A. L. Crane in reference to the quantity and condition of said land, and upon the advice and counsel of said Clinton White in respect to the land, plaintiff purchased said hereinabove described land from the herein-named defendants; that plaintiff bought said land and premises and defendants sold her the same upon the theory and basis that she was getting six hundred acres of first-class, clear, level,



arable land, [7] all of which was adapted to the raising of alfalfa, and that she was paying for the same at the rate of one hundred and twenty-five dollars per acre; and upon said basis and theory plaintiff paid to defendants the sum and price of seventy-five thousand dollars.

### IX.

That in pursuance of his said underhanded, secret and dishonest agreement with said U. L. Dike and said A. L. Crane, said F. I. Ramos used the trust and confidence imposed in him by plaintiff to the end of persuading plaintiff to purchase said property as hereinbefore set forth, and for and as a consideration for such abuse and betrayal of plaintiff's confidence he was actually paid and actually received from defendants and defendants' agents the sum of fifteen hundred dollars, which he then and there put to his own private account and uses and all the said parties to said transaction kept the same secret and away from the knowledge of plaintiff, and plaintiff never knew of nor had any knowledge of said transaction or the payment of said or any money to said F. I. Ramos until a time long afterward, when the said U. L. Dike and the said A. L. Crane and the said Harry K. Brown commenced to quarrel among themselves over their respective shares in the commission for the sale of said property, at which time the said Harry K. Brown came to plaintiff and advised her that said F. I. Ramos had been paid fifteen hundred dollars as a consideration for his having influenced her to purchase said property.

## X.

That all of the said representations of the said defendants and their agents hereinbefore named, in reference to said land and in reference to the character and condition thereof were false, fraudulent and untrue, and were known by defendants to be false, fraudulent and untrue at the time they were made, and the said false, fraudulent and untrue statements and representations were made by defendants with the single and sole purpose and intent of cheating, tricking and defrauding plaintiff, and to entice her to purchase the hereinbefore [8] mentioned and described land; that said six hundred acres of land is in fact not all level and clear, and is not all arable land, and is not all adapted to the growth or to the raising of alfalfa, as the said defendants and their said agents represented, but, on the contrary, only about four hundred and fifty acres out of said six hundred acres is as represented; that one hundred and fifty acres out of said six hundred acres lies outside of the levee, and said one hundred and fifty acres of land lying outside of the levee is practically worthless; that seventy-seven acres of that portion which lies outside of the levee is inundated and submerged land and is covered by the waters of the Feather River and is fit for no purpose whatever; that seventy-seven acres of that portion which lies outside of the levee is not worth more than ten dollars per acre; that since the time of the sale of said land to plaintiff there has been constructed a new levee on the outside and to the westward of the old levee, and said new levee has reclaimed about fifty-

seven acres lying between the said two levees, but said fifty-seven acres of land is so uneven and so covered with holes and hills and so densely covered with jungle, brush and trees that by the most conservative estimates it would cost plaintiff considerably more than one hundred and fifty dollars per acre to put said fifty-seven acres in a condition ready for cultivation.

## XI.

That by reason of said false, fraudulent and untrue representations upon the part of said defendants and their agents, A. L. Crane and U. L. Dike, and by reason of the fraud, conspiracy, duplicity, and double dealing of the said F. I. Ramos, who as is herein set forth, was made the agent of defendants while he occupied a fiduciary relationship with plaintiff herein, and by reason of the duplicity and double dealing upon the part of the said Clinton White, who was likewise made the agent of defendants while occupying a fiduciary relationship [9] with said plaintiff herein, plaintiff has been defrauded and damaged in the sum of eighteen thousand seven hundred and fifty dollars (\$18,750), to wit, plaintiff, by reason of the facts herein alleged, was induced to pay one hundred and twenty-five dollars per acre for one hundred and fifty acres of land (the said land on the outside of the said levee) which she did not bargain for and which is perfectly worthless for the purpose for which plaintiff was buying said land, and which said one hundred and fifty acres is of no value whatever.

WHEREFORE plaintiff prays the judgment of the Court as follows, to wit: That she be given judgment against said defendants in said sum of eighteen thousand seven hundred and fifty dollars, together with interest thereon from the 1st day of November, 1911, and for her costs and disbursements in this action, and for general relief.

Dated Sept. 30th, 1913.

LLOYD MACOMBER,  
Attorney for Plaintiff. [10]

State of California,  
City and County of San Francisco,—ss.

Isabelle Garwood, being first duly sworn, deposes and says: That she is the plaintiff mentioned in the within and foregoing complaint; that she has read said complaint, and knows the contents thereof, and that the same is true of her own knowledge, save as to those matters which are therein stated on her information and belief, and that as to those matters she believes it to be true.

ISABELLE GARWOOD.

Subscribed and sworn to before me this 30th day of September, 1913.

[Seal] J. D. BROWN,  
Notary Public in and for the City and County of San  
Francisco, State of California.

[Endorsed]: Filed Oct. 11, 1913. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [11]

[Title of Court and Cause.]

**Demurrer.**

The defendants, and each of them appear herein and demur to the complaint of plaintiff on file in this cause and specify their objections to said complaint as follows:

I.

That said complaint does not state facts sufficient to constitute a cause of action against these defendants, or against any thereof.

II.

That the Court has no jurisdiction of the persons of defendants or the subject of the action.

III.

That the complaint is ambiguous in that it does not show wherein plaintiff was damaged by the acts of defendants complained of in said complaint, or that she was damaged by such acts in any manner or for any sum whatever.

IV.

That said complaint is uncertain in the following particular:

Plaintiff alleges in her complaint that in her decision to purchase the land described in said complaint and for the sum therein expressed, she was guided by and relied upon the advice, knowledge and experience of F. I. Ramos, to whom she was engaged [12] to be married, but it nowhere appears in said complaint, except by inference, that said F. I. Ramos ever acted as the agent of defendants, in mak-



ing the sale of said land, or that any of the alleged acts of said F. I. Ramos, in connection with such sale of the property described in the complaint, were known to these defendants or any of them, or said F. I. Ramos, was authorized or empowered to act for said defendants or either thereof, in any matter relating to the sale of said land.

V.

That for the reasons stated in paragraph four of this demurrer said complaint is ambiguous.

VI.

That for the reasons stated in paragraph four of this demurrer, said complaint is unintelligible.

ARTHUR E. MILLER and  
A. H. HEWITT,

Attorneys for Defendants.

**Certificate of Counsel.**

The undersigned, counsel for defendants, certify that the above and foregoing demurrer is not filed for delay, and in the opinion of the undersigned, the same is well taken by point of law.

ARTHUR E. MILLER and  
A. H. HEWITT,

Attorneys for Defendants.

Service of the within demurrer by copy admitted this 22d day of November, 1913.

LLOYD MACOMBER,  
Attorney for Plaintiff.

[Endorsed]: Filed Nov. 22d, 1913. W. B. Mal-  
ing, Clerk. [13]

At a stated term, to wit, the November term, A. D. 1913, of the District Court of the United States of America, in and for the Northern District of California, Second Division, held at the courtroom in the city and county of San Francisco, on Monday, the 15th day of December in the year of our Lord, one thousand nine hundred and thirteen. PRESENT: The Honorable WILLIAM C. VAN FLEET, District Judge.

No. 15,701.

ISABELLE GARWOOD,

vs.

JOSEPH SCHEIBER et al.

**Order Overruling Demurrer.**

Defendants' demurrer having been called on three successive law and motion calendars and no one having answered said calls it was ordered that said demurrer be and the same is hereby overruled for want of prosecution. [14]

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[Title of Court and Cause.]

**Answer.**

To the Judges of the District Court of the United States of America, Northern District of California, Second Division.

Come now the defendants in the above-entitled cause, and answering the bill of complaint of plaintiff herein for grounds of answer admit, deny and allege as follows, to wit:

Defendants are informed and believe and upon such information and belief they allege, that the plaintiff in this cause is, and for a period of over two years has been a resident and citizen of the State of California, and they therefore deny that said plaintiff is or that she has been for a period of over two years immediately preceding the commencement of this cause a resident or citizen of the State of New York.

I.

These defendants deny the allegations contained in paragraph one of plaintiff's bill of complaint to the effect that Morris Scheiber and John Scheiber are citizens and subjects of Switzerland, and they allege that the said defendants, John [15] Scheiber and Morris Scheiber, have renounced all allegiance to every foreign State, Prince, Potentate and sovereignty, and that they and each of them did, before the filing of this complaint herein, in the office of and before the county clerk of the county of Sutter, State of California, duly declare their intention to become citizens of the United States of America, the said Morris Scheiber making such declaration on the 25th day of March, 1912, and the said John Scheiber making such declaration on the 2d day of January, 1913.

These defendants further allege that said John Scheiber, Morris Scheiber and Joseph Scheiber have been continuously, residents of the State of California for a period of over twenty years, and that the defendants, Frances Scheiber, Emma Scheiber



and Anna Scheiber now are and always have been citizens and residents of said State.

## II.

These defendants admit the allegations contained in paragraph two of said complaint, and they allege that the land referred to and described in said paragraph is more fully and definitely described from surveys made of said land since the first day of November, 1911, and before the commencement of this cause, as follows, to wit:

Beginning at the section corner common to sections eighteen and nineteen, township twelve north, range four east, and section twenty-four, township twelve north, range three east, Mount Diablo Base and Meridian, Sutter County, Cal., and running thence along the east boundary line of lot number two of the New Helvetia Rancho and which line is also the western boundary line of section eighteen, township twelve north, range four east, Mount Diablo Base and Meridian, north  $00^{\circ} 11'$  west, one thousand eight hundred and twenty and seventy hundredths feet; [16] thence south  $49^{\circ} 45'$  west, three hundred seventeen and forty-seven hundredths feet; thence north  $39^{\circ} 50'$  west, five thousand six hundred seventy-four and fifty-nine hundredths feet along the southerly boundary line of the Redfield Farm, so called, to a point on the easterly bank of the Feather River; thence following the meanderings of the said Feather River, south  $32^{\circ} 19'$  west, seven hundred seventy-six and seventy-nine hundredths feet; thence south  $45^{\circ} 49'$  west, one thousand two hundred twen-

ty-one feet; thence south  $79^{\circ} 49'$  west three hundred ninety-six feet; thence north  $40^{\circ} 26'$  west, nine hundred ninety feet to a point on the west boundary line of lot number two of the New Helvetia Rancho; thence continuing along the southerly or easterly bank of the aforesaid Feather River, north  $51^{\circ} 11'$  west, seven hundred forty-five and eighty hundredths feet; thence north  $56^{\circ} 11'$  west three hundred ninety-six feet; thence north  $70^{\circ} 11'$  west, three hundred ninety-six feet; thence south  $89^{\circ} 49'$  west, two hundred thirty-one feet; thence south  $86^{\circ} 19'$  west, three hundred eighty-nine and forty hundredths feet; thence south  $89^{\circ} 49'$  west, three hundred twenty-three and forty hundredths feet; thence south  $65^{\circ} 19'$  west, two hundred sixty-four feet; thence south  $48^{\circ} 19'$  west, six hundred forty-three and seventy-seven hundredths feet to a point, and which point marks the intersection of an old fence line with the southerly or easterly bank of the Feather River; thence along said fence line south  $63^{\circ} 43\frac{1}{2}'$  east, three thousand two hundred and ninety and seven hundredths feet to a point on the west boundary line of lot number two of the New Helvetia Rancho; thence along said west boundary line of lot number two of the New Helvetia Rancho south  $00^{\circ} 11'$  east, one hundred four and fifty hundredths feet to a point; thence south  $79^{\circ} 26'$  east, two thousand and eighty-seven and seventy-four hundredths feet; thence south  $14^{\circ} 24'$  west, one thousand and sixty-one and eighty-five hundredths feet; thence [17] south  $40^{\circ} 00'$  east, three thousand one hundred eighty-seven and forty-

eight hundredths feet; thence north  $89^{\circ} 49'$  east, two thousand three hundred sixty-four and seventy hundredths feet to the point of beginning, and containing four hundred and forty-eight and forty-two hundredths (448.42) acres.

Also the north east one quarter of section twenty-four, township twelve north, range three east, Mount Diablo Base and Meridian, Sutter County, California.

The land and premises above described being the same lands and premises, but more definitely described, conveyed to Joseph Scheiber, Albin Scheiber, Morris Scheiber and John Scheiber, by the Pacific Mutual Insurance Company of California, a corporation, by deed dated December 15, 1908, and recorded in the office of the recorder of the county of Sutter, State of California, on January 2d, 1909, in Book 40 of Deeds, page 484, and comprising the whole of the so called Nicolaus Allgier Ranch, situated below the town of Nicolaus, in said Sutter County and including lot four of the southwest quarter of section eleven and lot five of the southeast quarter of section eleven and lots four and twenty-three of the northeast quarter of section fourteen, in township twelve north, range three east, Mount Diablo Meridian.

### III.

These defendants admit that for some time prior to November 1st, 1911, they were desirous of selling the land described in paragraph two of this answer, and they admit that they entered into an agreement with the California Colonization Company, a corporation, for the sale of said land, and that they agreed

to pay said corporation a certain commission for effecting such sale upon terms specified in such agreement, but they deny that they ever entered in any agreement or contract with Harry K. Brown, U. L. Dike and A. L. Crane, or either thereof, for the [18] sale of said land, and they deny further that said Harry K. Brown, U. L. Dike and A. L. Crane, or either thereof ever were the agents of these defendants, or either thereof, in the sale of said land, in any manner or at all, or that they, or either thereof ever agreed with said persons or either thereof to pay them or either of them a commission or any compensation for affecting a sale of said lands.

#### IV.

These defendants and each of them deny that U. L. Dike, and A. L. Crane or either of them ever were, at any time, or for any purpose the agents of these defendants or any thereof. These defendants, of course, have no knowledge except that acquired upon information as to what, if anything may have been said in the private interview referred to in paragraph four of plaintiff's said bill of complaint, and alleged therein to have taken place between U. L. Dike, and A. L. Crane and said F. I. Ramos, except such knowledge as they have acquired on inquiry and information, and basing their denials upon such information and their belief in the correctness thereof, they deny that said U. L. Dike and said A. L. Crane or either thereof, ever offered to said F. I. Ramos, a valuable or any consideration, to put in his own private pocket or to use for his own personal profit in consideration of his using the trust and confidence

imposed in him by plaintiff to the purpose of inducing plaintiff to buy certain real estate which they wished to sell; and they and each of them deny that said U. L. Dike and A. L. Crane, or either of them, entered into a secret or any understanding, known or unknown, to plaintiff to the effect that said Ramos was to receive the sum of fifteen hundred dollars or any sum whatever, in the event that he should persuade plaintiff to buy the property hereinbefore described, or any other property. [19]

## V.

These defendants deny that on or about the 21st day of September, 1911, or on any other date or at all, she was prevailed upon by an agent or agents of defendants, or either of them, to visit the property described in the complaint; deny that the only times plaintiff saw said property before purchasing the same, were on September 21st, and September 30th, 1911; deny that on said dates or on either thereof, said plaintiff was suffering from a sprained ankle to such an extent or to such a degree that it was impossible for her to walk more than a few feet at a time, or that such injury made it impossible for plaintiff to walk over the premises, or to examine the same; deny that the defendant, Morris Scheiber or any other defendant pointed to the levee on the east bank of the Feather River, or that the attention of plaintiff was called to the same by defendants or any other person as being or forming the western boundary of the ranch of defendants; deny that said defendants or either of them, or any other person, stated to plaintiff that said levee constituted the western



boundary, or any boundary of said property; deny that the expanse shown to the plaintiff, or indicated to her was clear and level land; deny that the defendant, Morris Scheiber, then and there represented, or ever represented to plaintiff that said ranch contained six hundred acres of land or that said six hundred acres were all clear and level land or clear or level land; deny that said defendant or any defendant, or any other person made any comparisons or representations as to the quality or quantity of said land or any part or portion of the same; deny that defendants or either thereof, or any agents of defendants or either thereof, in dealing with plaintiff, or otherwise, at all times, or any time, or on any occasion whatever, represented to plaintiff that said place contained six hundred acres of clear, arable land or clear or arable [20] land; deny that said defendants or either thereof, or any agent or agents of defendants or either thereof, ever enticed plaintiff to purchase said land; deny that said defendants or either thereof, or that any agent of defendants or either thereof, ever represented to plaintiff that two hundred and fifty acres of said land were under cultivation and growing alfalfa; deny that said defendants or either thereof, or that any agent of defendants or either thereof, advised and represented, or advised or represented to plaintiff that said ranch consisted of six hundred acres of the finest alfalfa land in the State of California, and that she could or that she could buy the same for one hundred and twenty-five dollars per acre; deny that a price by the acre was ever made to the plaintiff, either by defend-

ants or by any agent of defendants; deny that plaintiff is or that she was at the times mentioned in her complaint ignorant and inexperienced or ignorant or inexperienced as to land; deny that she knew nothing of real estate values; denies that she is now or was at the times mentioned in her complaint without business training or experience; deny that plaintiff in purchasing said land relied solely or relied at all upon the counsel, statements, and advise, or either thereof, of said defendants or either thereof, or any agents or agent of defendants or either thereof; deny that said F. I. Ramos and Clinton White, or either of them ever were the agents of defendants or either thereof, at any time, or for any purpose; defendants deny that the defendant, Morris Scheiber, ever met or saw plaintiff on the ranch in question prior to the date of her purchase of the same.

## VI.

Defendants deny that plaintiff ever believed, or that she ever thought that six hundred acres of the land described in her complaint were all clear and level land, or that said land or any part thereof, was contained within the boundaries pointed out to [21] her by said defendant, Morris Scheiber; deny that it appeared to plaintiff that the tract contained six hundred acres of clear and level land, ready for cultivation; defendants deny that at the times mentioned in plaintiff's bill of complaint they or any of them, or any agent or agents of said defendants, or any of them, were aware of the fact, that plaintiff was laboring under a misapprehension as to the character

and conditions or character or condition of said land, or any part thereof; deny that they or any of them, or that any agents knew that plaintiff was ignorant of the fact, that one hundred and fifty acres of said six hundred acres were outside the levee, and were unfit and unadapted to raising or unfit or unadapted to raising alfalfa, or that said one hundred and fifty acres lying outside the levee was practically worthless.

These defendants allege that said plaintiff, at no time, has labored under a misapprehension concerning the quantity or quality of said land, or any portion thereof, or the condition or character thereof, or the location of the same.

Defendants allege that prior to the purchase of said land by plaintiff, said plaintiff and her agent and betrothed, F. I. Ramos, went upon said land on three different occasions, for the express purpose of investigating its character, extent, condition and location, and that on each of said occasions they and each of them, made a thorough investigation of said land and the location of the same; that the exterior boundaries of said tract were accurately pointed out to them and each of them, and the physical location of said land is such that it would be impossible for plaintiff to have been mislead or deceived as to the extent, condition or character of said land or any part thereof.

## VII.

On information and belief defendants also deny that plaintiff [22] went to one, Clinton White, a lawyer of Sacramento, and employed him or his services to represent her in the matter of the deal re-



ferred to in her said bill of complaint; deny that said Clinton White took up for plaintiff the matter of said deal; deny that plaintiff assumed and believed or assumed or believed that said Clinton White was in her employ or that he was acting as her attorney; deny that plaintiff ever asked said Clinton White, what the words "more or less," referred to in the agreement which plaintiff alleges she executed on or about the 25th day of September, 1911, meant, or that she told said Clinton White that it was her understanding that she was buying six hundred acres of the finest alfalfa land in the State of California; deny that she ever told said Clinton White what her understandings were concerning the purchase of said lands, or that the said Clinton White knew anything about her understandings concerning the same or that he ever knew anything about the character or condition of said land, or that he was ever asked advice concerning its character or condition; deny that he ever explained to or told plaintiff that the agreement referred to in paragraph six of her bill of complaint meant that she was purchasing six hundred acres of fine alfalfa land or six hundred acres of any kind of land, or that he ever told plaintiff or explained to her that the words, "more or less" were simply law terms, or that he explained said words to her in any manner or at all;

On information and belief defendants also deny that plaintiff, after the said deal was consummated, or at any other time, went to the office of said Clinton White and asked him what his charges were, or that she ever spoke to said Clinton White concerning his

*his* charges; deny that said Clinton White, in reply to questions asked of him by plaintiff, or otherwise, ever told plaintiff that her bill would come along in good time, or that he ever made any evasive reply to her concerning said matter or any matter. [23]

These defendants deny that the said Clinton White was paid money or any other consideration by them or any agent of them, or either of them, for helping *any* any agent or agents of defendants to consummate said sale or any sale; deny that any money or other consideration was ever paid to said Clinton White by defendants or by any agent or agents of defendants or either of them, for furthering the ends and interests or ends or interests of defendants, or any agent or agents of defendants, by quieting any fears or objections of plaintiff in the matter of said transaction and for encouraging or for encouraging her to purchase said property; deny that said Clinton White ever, in any manner, encouraged plaintiff in purchasing said property or that he ever asked for, gave any advice concerning the same.

On information and belief these defendants deny that said Clinton White did the things alleged to have been done by him, mentioned in said paragraph six of plaintiff's bill of complaint, while pretending to plaintiff to be her lawyer and while or while pretending to her to be looking out for her interests, and they deny that the said Clinton White ever pretended to plaintiff to be or that he ever was her attorney in said matter or that he was ever asked to represent her in said transactions; deny that said Clinton White was paid to look out for the interests of defendants in said

transaction against the interests of plaintiff therein.

## VIII.

These defendants deny that said F. I. Ramos, in pursuance of any underhanded dishonest and treacherous agreement, or in pursuance of any underhanded, or dishonest or treacherous agreement, which he, with or without, the knowledge of plaintiff had entered, into with U. L. Dike and A. L. Crane, influenced, advised and persuaded plaintiff to buy the property described in complaint; deny that plaintiff purchased said land from defendants, [24] upon the statements and representations, or statements or representations of said defendants, and said U. L. Dyke and said A. L. Crane, or either or any of them, in reference to the quantity and condition or quantity or condition of said land, or that said plaintiff purchased said land upon the advice and counsel or advice or counsel of said Clinton White, in respect to said land, or that she purchased said land upon any statements, representations, counsel or advice of any of said persons; deny that plaintiff bought said land and premises, or either thereof, or that defendants sold her the same upon the theory and basis or theory or basis that she was getting six hundred acres of first class, clear, level, arable land, or six hundred acres of first-class, or clear, or level or arable land, or upon the basis or theory that all of said land was adapted to the raising of alfalfa, or upon the basis that she was paying for the same at the rate of one hundred and twenty-five dollars per acre, or that she purchased said land upon all or any of such theories or basis; deny that upon such basis or theory or all or any thereof, plaintiff

paid to defendants the sum of seventy-five thousand dollars.

### IX.

Deny that in pursuance of any underhanded, secret and dishonest agreement made with U. L. Dike and A. L. Crane or either thereof, by said F. I. Ramos, said F. I. Ramos used the trust and confidence or trust or confidence imposed in him by plaintiff to the end of persuading plaintiff to purchase said property in any manner or at all; deny that as and for a consideration for any abuse and betrayal or abuse or betrayal of plaintiff's confidence, said F. I. Ramos was actually paid, or that he actually received from defendants and defendants agents, or *or* either or any thereof, the sum of fifteen hundred dollars, which he then and there put to his own private account and uses, or [25] either thereof; deny that all the parties to said transaction kept the same secret and away from the knowledge of plaintiff; deny that plaintiff never knew of nor had any knowledge of the payment of the sum of fifteen hundred dollars to said F. I. Ramos, until a time long after it was paid.

And in this regard these defendants are informed and believe and upon their information and belief allege, that in order to get the property referred to in the complaint herein at the sum of fifteen hundred dollars less than was asked for it by the defendants, the said plaintiff, the said plaintiff entered into an agreement with her friend, F. I. Ramos, whereby the said F. I. Ramos, was to demand, and under which he did demand the *the* payment to him by the California Colonization Company of the sum of fifteen hundred



dollars, out of the commissions to be earned by said company in making a sale of said property as a condition precedent to the purchase thereof by the plaintiff, and said company, believing that a sale of said property would not be effected unless it acceded to the said demand of said F. I. Ramos, agreed to pay and afterwards did pay to said F. I. Ramos, said sum of fifteen hundred dollars, out of the commissions earned by it in making a sale of said property, and defendants are informed and believe and upon such information and belief allege that the said F. I. Ramos, immediately upon receiving said sum of fifteen hundred dollars from said company, paid the same and the whole thereof, to plaintiff. These defendants further allege that neither one of them ever knew of the payment of said sum of fifteen hundred dollars to said F. I. Ramos, by the said Colonization Company until long after it was paid, nor did they ever know of an agreement to pay said sum.

X.

Defendants deny that all or any of the representations made by them or either of them or by any agent of either or any of [26] them, named in said complaint or otherwise, in reference to said land and in reference to the character and condition or character or condition thereof, or in any manner or at all, were false, fraudulent and untrue, or false, fraudulent or untrue or that said representations or any thereof, were known by defendants, or by any of them, to be false, fraudulent and untrue or false, fraudulent or untrue, at the time they were made or at any other time; deny that any false, fraudulent and untrue

statements and representations, or statements or representations, were ever made by defendants or either thereof, with the single and sole, or single or sole purpose and intent or purpose or intent of cheating, tricking and defrauding, or of cheating, or tricking or defrauding plaintiff or to entice her to purchase the land described in the complaint herein; deny that any false, fraudulent or untrue statements concerning said land, or its character, condition or extent, were ever made to plaintiff by defendants or either of them, or by any agent or agents of them or either of them;

These defendants deny that they or either of them, or the agent or agents of them or either of them ever represented to plaintiff that six hundred acres of said land was all level and clear, and arable or level or clear or arable or that it was all adapted to growing or raising of alfalfa; deny that they ever represented that said ranch contained six hundred acres; deny that only four hundred and fifty acres of said land is as was represented; deny that the land outside of the levee is practically worthless; deny that seventy-seven acres of said land lying outside of the levee is inundated and submerged land or inundated or submerged land, or that, except in flood time, it is covered by waters of Feather River, or that it is fit for no purpose; deny that seventy-seven acres, or any number of acres of said portion of said land lying outside of said levee is not worth [27] more than ten dollars per acre.

They admit that about fifty-seven acres of said land that was, at the date of purchase thereof by plaintiff, lying outside of the levee has been reclaimed by the



construction of a new levee, but they deny that such acreage is so uneven and so covered with holes and hills, or either thereof, or so densely covered with jungle, brush and trees, or either thereof that it would cost plaintiff more than one hundred and fifty dollars per acre to put said acreage in a condition ready for cultivation.

And in this regard these defendants allege that the reasonable cost of placing said fifty-seven acres in a condition for cultivation would not exceed thirty dollars per acre, and that the value of said land when cleared will exceed two hundred and fifty dollars per acre.

## XI.

Defendants deny that by reason of any false, fraudulent, and untrue, or by reason of any false or fraudulent or untrue representations upon the part of the said defendants or either of them or any agent or agents of defendants or either of them, or that by reason of any fraud, conspiracy, duplicity and double dealing or that by reason of any fraud, conspiracy, duplicity or double dealing of F. I. Ramos, as the agent, or who was made the agent of defendants, or either of them, while he occupied a fiduciary relationship with plaintiff, or that by reason of the duplicity and double dealing, or duplicity or double dealing, upon the part of the said Clinton White, as, or who was made the agent of defendants, while occupying a fiduciary relation with said plaintiff, plaintiff has been damaged and [28] *and* defrauded, or damaged or defrauded in the sum of eighteen thousand seven hundred and fifty dollars, or in

any sum whatever; deny that said plaintiff by reason of the facts alleged in said complaint was induced to pay one hundred and twenty-five dollars per acre for one hundred and fifty acres, or any number of acres of land, either on the inside or outside of the levee referred to in said complaint which she did not bargain for and which or which were perfectly worthless, or worthless in any degree or at all, for the purpose for which plaintiff was buying said land; deny that said one hundred and fifty acres is of no value whatever; deny that plaintiff ever bought any land of defendant at a stipulated price per acre; deny that by any act, representation or statement made by said defendants, at any time or place or by any agent or agents of defendants or either thereof, plaintiff has ever been defrauded, wronged or damaged; deny that said F. I. Ramos or said Clinton White ever were the agents or that they ever acted as the agents of defendants in the sale of the land described in said complaint; deny that there was any fraud, conspiracy, duplicity or double dealing or any element of either thereof on the part of defendants or either of them, in the transactions referred to in the complaint herein.

As a further, separate and distinct defense to plaintiff's cause of action as alleged in her complaint these defendants allege:

## XII.

That on the 27th day of September, 1911, these defendants and the plaintiff herein, entered into a contract in writing, a copy of which contract is in the following words and figures, to wit:

THIS CONTRACT, made this 27th day of Sep-

tember, 1911, between Joseph Scheiber, Morris Scheiber and John Scheiber, of the county of Sutter, State of California, parties of the first part, and [29] Isabelle Garwood, party of the second part, WITNESSETH:

That the parties of the first part agree to sell to the party of the second part, and the party of the second part agrees to buy from the parties of the first part the real property with the improvements thereon, situated in the county of Sutter, State of California, and particularly described as follows, to wit:

Beginning at a point on the left bank of the Feather River, fifteen chains and eighty links below the south west corner of the so called Nicolaus Algier Tract; running thence down stream following the meanderings of said river to the point where the western boundary line of lot two of the New Helvetia Rancho intersects said river; thence south fifteen degrees and eight minutes east, following said boundary line fourteen chains and forty-four links; thence south sixty-four degrees east six chains and forty-four links; thence south seventy-eight degrees and thirty minutes east, twenty-four chains and fourteen links; thence south fourteen degrees and thirty minutes west, fifteen chains and ninety links; thence south forty degrees east forty-eight chains and seventy links; thence east two chains and forty-five links; thence north fifty degrees east, and thirty-eight chains and eleven links to a point on the extended rear line of said Nicolaus Algier Tract, fifteen chains and eight links distant from the southeast corner of the same; and thence north thirty-nine degrees and thirty-six

minutes west eighty chains to the place of beginning. Also the northeast quarter of section twenty-four, in township twelve north, range three east, Mount Diablo Meridian. The whole containing six hundred acres of land, more or less, and being the whole of the so called Nicolaus Algier Ranch situated below the town of Nicolaus, bounded on the east by the farms of P. Straugh and Phil. R. Drescher, on the north by the Redfield farm, on the west by the Feather River, and on the south by the farms of Claus Peters and John Schwall, at and for the price of seventy-five [30] thousand dollars and upon the terms and conditions hereinafter stated, to wit:

The party of the second part will deposit with the Fort Sutter National Bank of Sacramento, California, of even date, with the execution of this agreement, the sum of five thousand (5000) dollars, which sum of five thousand (\$5000) dollars shall be held by said bank and paid over in accordance with the terms of this contract.

The party of the second part will assume and pay as a part of the purchase price of said property the mortgage thereon, held by the Pacific Mutual Life Insurance Company and given by the parties of the first part and Albin Scheiber.

In addition to said five thousand (\$5000) dollars, so to be deposited in the Fort National Bank, the party of the second part on or before the first day of November, 1911, will pay the parties of the first part a further sum of thirty thousand five hundred (\$30,500) dollars and will also execute, acknowledge and deliver to the parties of the first part a promissory

note for twenty thousand (20,000) dollars and a second mortgage on said lands to secure said promissory note of twenty thousand (\$20,000) dollars. The said mortgage to be substantially in the form made use of by White, Miller & McLaughlin, and said note to be payable on or before three years from its date and to bear interest at the rate of Six (6%) per cent per annum payable annually.

The parties of the first part will execute and acknowledge and upon the receipt of the said five thousand (\$5000) dollars, so to be deposited in the Fort Sutter National Bank and a further payment to them of said sum of thirty thousand five hundred (\$30,500) dollars in cash, and the execution and delivery by the party of the second part of said note and mortgage for twenty thousand (\$20,000) dollars, will duly sign, execute, acknowledge and deliver to the party of the second part a good and sufficient [31] bargain and sale deed to said lands conveying said lands to the party of the second part by good title, free from encumbrances, except the mortgage for nineteen thousand five hundred (\$19,500) dollars, to said Pacific Mutual Life Insurance Company hereinbefore mentioned.

The parties of the first part will as soon as the abstract of title can be continued down to date by a searcher of title, furnish to the party of the second part, a proper abstract of title to said lands for examination, and the party of the second part shall have not less than ten (10) days from the delivery of said abstract of title, to her, to obtain an opinion of title of said lands from an attorney.



If it shall appear that the title to said lands is so defective or that there are such encumbrances thereon that the parties of the first part cannot convey a good title to said lands, then this contract shall be at an end. If the title to said lands shall be in all respects sufficient and free from encumbrances, except said mortgage to the Pacific Mutual Life Insurance Company, the parties of the first part shall execute, acknowledge and deliver said deed to the party of the second part and the party of the second part shall comply with the conditions and covenants in this contract to be performed by her.

If the title to said lands shall prove in some small particular insufficient, but such defect in title shall be such as can be perfected by a suit to quiet title, then the provisions of this contract shall be carried out by both parties and the parties of the first part shall be obligated to pay to the party of the second part the reasonable expense of such suit to quiet title, not exceeding two hundred and fifty dollars (\$250.).

If the title of the parties of the first part shall be found sufficient and if the parties of the first part shall on or before November 1, 1911, execute, acknowledge and tender to the [32] party of the second part a proper deed of conveyance of said lands and the party of the second part shall refuse to accept such deed and refuse to comply with the covenants and provisions in this contract to be performed by her, then said five thousand (\$5,000) dollars, so to be deposited with the Fort Sutter National Bank shall be paid over by said bank to the parties of the first part and shall be treated and considered



as liquidated damages for the failure of the party of the second part to comply with this contract, it being agreed that the actual damages, which would be suffered by the parties of the first part in such event, would be impracticable or extremely difficult to fix.

If, on the other hand, the title of said lands shall, upon examination, prove to be so faulty or insufficient that the parties of the first part cannot give good title to the party of the second part, then said five thousand (\$5,000) dollars shall be returned to the party of the second part by said Fort Sutter National Bank.

If this contract shall be fully complied with by both parties thereto, said five thousand (\$5,000) dollars shall be paid over by said Fort Sutter National Bank to the parties of the first part, and shall be a part of the consideration of seventy-five thousand (\$75,000) dollars, to be paid by the said party of the second part for the said lands.

AND WHEREAS, there is a lot of livestock and other personal property on said lands owned by the parties of the first part, and made use of by them in conducting their farming operations on said lands, and the parties of the first part who desire the transfer of said lands to the party of the second part also desire to sell and transfer to her said livestock and personal property, and the party of the second part in the event of purchasing the lands also desires to purchase said livestock and [33] personal property.

IT IS NOW AGREED that the parties of the first part will sell and deliver to the party of the second

part and the party of the second part will purchase and receive from the parties of the first part said livestock and other personal property on said lands; a full list of said livestock and personal property so to be sold by the parties of the first part to the party of the second part, together with the prices thereof is attached hereto and made a part of this contract and marked Exhibit "A."

IT IS UNDERSTOOD AND AGREED that the purchase price of said personal property shall be paid by the party of the second part, to the parties of the first part in cash at the time of the delivery of the deed of said lands by the parties of the first part to the party of the second part. However it may be the desire of the party of the second part to have some further time within which to make payment to the parties of the first part of the purchase price of said livestock and personal property, and should she wish additional time for that purpose then she shall give the parties of the first part her promissory note for the purchase price of said personal property, payable on or before January 15, 1912, with interest thereon, at the rate of six (6%) per cent per annum, and in such event the mortgage of twenty thousand (\$20, 000) dollars, to be given by her to the parties of the first part on said lands, shall be changed to a mortgage on said lands for said twenty thousand (\$20,000) dollars, and also, to secure the promissory note so to be given by her for the purchase price of said livestock and personal property, and in such event, said mortgage shall also contain and include the mortgage of said personal property in favor of

the parties of the first part with the understanding and agreement that upon the payment by the party of the second part of the promissory note for the purchase price of said livestock and personal [34] *personal* property, the livestock and personal property shall be released from said mortgage, leaving in such event, and under such conditions, only the mortgage on the real estate for the payment of the note of twenty thousand (\$20,000) dollars hereinbefore mentioned.

As to the taxes on the property for the present year it is covenanted and agreed that the parties of the first part shall pay all of the taxes on the personal property and shall pay two-thirds ( $\frac{2}{3}$ ) of the taxes on the real property, the subject of this agreement, and the party of the second part shall pay one-third ( $\frac{1}{3}$ ) of the State and county taxes for the year 1911, on the real property, the subject of this agreement.

The board of supervisors of the county of Sutter have lately provided for the laying out of a new road about one-quarter ( $\frac{1}{4}$ ) of a mile in length along one of the boundary lines of the lands hereinbefore described, and desire a strip of land forty (40) feet in width for that purpose, and it is understood will pay two hundred and fifty-two dollars, for the land so to be taken for road purposes. It is understood that the party of the second part accepts said lands subject to the proceedings taken by said board of supervisors and will be entitled to receive from the county of Sutter, the compensation to be paid for the land

so to be taken for road purposes.

JOSEPH SCHEIBER.

MORRIS SCHEIBER.

JOHN SCHEIBER.

ISABELLE GARWOOD.

**Exhibit "A."**

Being list of the personal property and prices thereof, referred to in contract dated September 27th, 1911, and made between Joseph Scheiber, Morris Scheiber and John Scheiber, parties of the first part, and Isabelle Garwood, the party of the second part. [35]

167 cows at \$60 a head.

42 heifers at \$40 a head.

48 calves at \$20 a head.

4 bulls at \$60 a head.

20 horses at \$350 a span.

All the hogs at market price.

All the chickens for \$100.

2 hay-rakes for \$50.

Cheese Factory, complete \$300.

Gasoline engine and pump \$173.

2 Jackson Forks	}	\$100
1 Swing Derrick		
1 Feed Rack		
12 Pitchforks		
Ropes and Pulleys	}	

1 Double Breaking Cart	}	\$60
1 Single " "		
1 Standing Scale.		

All 4 ft. wood at \$3 a cord.

All stovewood at \$4 a cord.

(It being understood that two lengths of stovewood constitutes a cord.)

7 sets Stretchers	}	\$175
3 fifth chains		
1 John Deere Plow		
1 -6=horse gang-plow		
1 -4=horse steel roller		
1 -4=horse harrow		
1 single plow		

Blacksmith-shop	}	\$20
1 crosscut circle-saw		
1 grind-stone		

2 boats \$30

3 mowers \$120

4 hay wagons with 4 hay-racks and 3 farming-beds  
\$200

1 spring wagon \$80

9 sets harness \$180

All the hay on the ranch at \$8 a ton stack measurement.

### XIII.

That pursuant to the terms and conditions of said contract [36] and to carry into effect its provisions, plaintiff on the first day of November, 1911, paid to defendants, on account of the purchase price of the real and personal property mentioned and described in said contract, the sum of thirty-seven thousand one hundred and nine dollars in cash, thirty-five thousand of said sum being applied as a payment on the real property described in said con-



tract, and two thousand one hundred and nine dollars being applied as a payment on the personal property described in said contract, and executed and delivered to defendants Joseph Scheiber, Morris Scheiber and John Scheiber, two certain promissory notes, one in the sum of twenty thousand dollars, to be applied as a payment on the purchase price of the real property, and described in said contract, payable on or before three years from date, the payment of which was secured by a mortgage on the said real property, sold by defendants to plaintiff, made and executed by her on the date last aforesaid, to the defendants, Joseph Scheiber, Morris Scheiber and John Scheiber, and which said mortgage was duly recorded in the office of the recorder of the county of Sutter, State of California, on the 9th day of November, 1911, in Book 31 of Mortgages, at page 210, and the other for the sum of nineteen thousand five hundred dollars, to be applied in full payment of the balance due on the purchase price of the personal property mentioned and described in said contract, as agreed by plaintiff and defendants, payable on or before January 15, 1912, the payment of which was secured by a mortgage of even date with said note, executed by the plaintiff to the defendants, Joseph Scheiber, John Scheiber and Morris Scheiber, and recorded in the office of the recorder of the county of Sutter, State of California, on the said 9th day of November, 1911, in Book 31 of Mortgages, at page 213, said mortgage being indexed in the records of said recorder's office, both as real estate and as a chattel [37] mortgage.



Upon the payment of said sum of thirty-seven thousand one hundred and nine dollars in cash, and the execution and delivery to defendants by plaintiff, of the promissory notes and mortgages above described, defendants on said first day of November, 1911, executed and delivered to plaintiff, a deed of said land and premises, and turned over and delivered to her, the whole of the personal property described in said contract, the remaining portion of the purchase price of said lands, being represented by a mortgage executed by the defendants to the Pacific Mutual Life Insurance Company of California which said mortgage and the amount due on said mortgage on said date, as agreed upon by plaintiff and defendants, being the sum of twenty thousand dollars.

That subsequently, plaintiff's said note for said sum of nineteen thousand five hundred dollars, was taken up and paid by her, and the mortgage which secured the payment of the same was duly released and discharged of record by the holders thereof.

#### XIV.

That the real property mentioned, described and referred to in said contract, and in the deed made and executed by the defendants, to plaintiff in pursuance of said contract, consists of a tract of land containing approximately six hundred acres, situated below the town of Nicolaus in said Sutter County which is now and for a period of more than thirty years has been generally known and designated by people of that locality and by residents of Sutter County as the "Nicolaus Allgier Ranch" and it was

the intention of defendants to and they did sell and convey by the deed executed and delivered to plaintiff as hereinbefore alleged, the whole of said property known as the Nicolaus Allgier Ranch, and plaintiff took immediate possession of the whole of said property under said deed, and ever since so taking possession thereof, she has been and still is operating and farming [38] the same.

That prior to the making of the contract of purchase of the real and personal property set forth and described in said contract of September 27, 1911, hereinbefore recited, plaintiff went upon said premises on three different occasions, and viewed said real property and all thereof; and examined said personal property and all thereof; that the defendant, John Scheiber, at the times of such viewing and examination of said real property by plaintiff as aforesaid pointed out to her the true boundaries of said real property, and fully and truthfully explained to her such boundaries, and no false statements or representations were ever made to her at any time or place by these defendants, or by any agent or agents of defendants concerning the said boundaries of said premises, the acreage contained therein, the condition or character of the soil, the acreage planted to alfalfa, or concerning any other matter or thing in connection with the said lands or personal property.

#### XV.

That as agreed in said contract set out in this defense, defendants furnished to plaintiff an abstract of the title to said property and delivered the same to plaintiff, and the said title to said property was, after

due examination made by her, accepted by her.

That plaintiff has never informed defendants or either of them of her desire to have any suit brought to correct any defect in the title to said property, but on the 20th day of September, 1913, plaintiff herself commenced such an action in the Superior Court of the county of Sutter, State of California, which action is still pending in said court, the court number of same being 1472, and defendants stand ready and willing to pay the expense of bringing such suit to judgment, provided such expense shall not exceed the sum of two hundred and fifty [39] dollars, the amount specified for such purpose, in the contract of sale and purchase made between plaintiff and defendants on the said 27th day of September, 1911, and set forth in paragraph twelve of the answer.

#### XVI.

That the defendants and their predecessors in interest in the real property described in the complaint herein and specifically described in paragraph two of this answer for a period of more than twenty-five years up and prior to the date of the execution of the agreement made between plaintiff and these defendants, and set out in paragraph twelve of this answer, had been the owners in fee, in the possession of, and entitled to the possession of all of the real property mentioned and described in the complaint herein and in paragraph two of this answer, and of which plaintiff took possession, and during all of said period of time, all taxes levied or assessed against said property and every part or portion thereof, or which in any manner constituted a lien

thereon were paid by defendants or their predecessors in interest; that at no time during a period of more than twenty-five years next prior to the execution and delivery to plaintiff of the deed to said property by defendants as herein alleged has any person made claim to said property or to any part or portion thereof.

### XVII.

That the contract in this defense above set forth and the sale of the real and personal property in said contract described was subject of and constituted a single transaction; that at the time the said contract was entered into by plaintiff and defendants, it was expressly stated by defendants to plaintiff that they would not sell the said land unless the said personal property was taken also by the purchaser nor would they sell the said personal property unless a sale of the land should be effected at the same time, defendants, being desirous, in one [40] transaction of winding up their farming operations and quitting their farming interests, and the agreement made by plaintiff to purchase both said real and personal property was one of the principal reasons which induced defendants to enter into such contract of sale with plaintiff.

### XVIII.

These defendants never, at any time, or in any manner, directly or indirectly, mislead or deceived plaintiff in their negotiations with her for the sale of said property or any thereof, nor did they or either or any of them misrepresent to plaintiff or mislead her in any particular as to the condition, value, loca-

tion or *intent* of said property or any thereof, and they allege that the purchase price of said real property and of said personal property paid by plaintiff was a fair and reasonable market value of the same at the time of purchase. and that plaintiff was not, in any manner or to any degree defrauded in such transactions.

As a further, separate and distinct defense to plaintiffs cause of action as herein alleged, the defendants herein specially refer to paragraphs twelve, thirteen, fourteen, fifteen sixteen, seventeen and eighteen of this answer, and by special reference to said paragraphs reaver and reallege each and every allegation contained in said paragraphs and make them and each of them a part of this defense.

### XIX.

That on the 11th of March, 1912, plaintiff herein served upon the defendants a written notice of which the following is a true copy:

“To Joseph Scheiber and Frances Scheiber, (his wife), Morris Scheiber and Emma Scheiber, (his wife), and John Scheiber and Anna Scheiber, (his wife). and to the Pacific Mutual Life Insurance [41] Company of California, a corporation.

You and each of you, take notice that the undersigned does hereby offer to rescind and does rescind the agreement, contract and transaction had between Joseph Scheiber and Frances Scheiber, his wife, Morris Scheiber and Emma Scheiber, his wife, and John Scheiber and Anna Scheiber, his wife, and the undersigned, whereby, on or about the 1st day of November, 1911, Joseph Scheiber and Frances



Scheiber, his wife, Morris Scheiber and Emma Scheiber, his wife, and John Scheiber and Anna Scheiber, his wife, conveyed to the undersigned certain lands and premises situated in the county of Sutter, State of California, and more particularly bounded and described as follows, to wit:

Beginning at a point on the left bank of the Feather River, fifteen chains and eighty (15.80) links below the southwest corner of the so-called Nicolaus Allgier Tract; running thence down stream following the meanderings of said river to the point where the western boundary line of lot two (2) of the New Helvetia Rancho intersects said river; thence south fifteen (15) degrees and eight (8) minutes east, following said boundary line fourteen chains and forty-four (14.44) links; thence south sixty-four (64) degrees east, six chains and fourty-four (6.44) links; thence south seventy-eight degrees (78) and thirty (30) minutes east twenty-four chains and fourteen (24.14) links; thence south fourteen (14) degrees and thirty (30) minutes west, fifteen chains and ninety (15.90) links; thence south forty degrees (40) east, forty-eight chains and seventy (48.70) links; thence east two chains and forty-five (2.45) links; thence north fifty (50) degrees east, thirty-eight chains and eleven (38.11) links to a point on the extended rear line of said Nicolaus Allgier Tract, fifteen chains and eight (15.08) links distant from the south east corner of the same; and thence north thirty-nine degrees and thirty-six (36) minutes west eighty (80) chains to the place [42] of beginning. Also the north east quarter of Section twenty-four



(24), in Township Twelve (12) North, Range three (3) East, Mount Diablo Base and Meridian. The whole containing (600) six hundred acres of land, more or less, and being the whole of the so-called Nicolaus Allgier Ranch situated below the town of Nicolaus, bounded on the east by the farm of P. Straugh and Phil. R. Drescher, on the north by the Redfield farm, on the west by the Feather River, and on the south by the farms of Claus Peters and John Schwall, and being the same land described in a deed recorded in the office of the county recorder of Sutter County, California, in Book 46 of Deeds at page 23, Sutter County Records.

IN PURSUANCE WHEREOF, the undersigned does hereby agree to tender to Joseph Scheiber and Frances Scheiber, his wife, Morris Scheiber and Emma Scheiber, his wife, and John Scheiber and Anna Scheiber, his wife, a deed, and does hereby tender to the said last mentioned parties, and each of them, a deed duly signed and acknowledged before a notary public, so as to entitle the same to be recorded, conveying to you, said last mentioned parties, and each of you, the land as hereinabove described, and by you, the said Scheibers, and each of you, conveyed to her.

The undersigned also demands that you, the said Scheibers, and each of you, cancel and surrender the note made by the undersigned to you, and each of you, for the sum of twenty thousand dollars (\$20,000), dated Sacramento, California, November 1st, 1911, and that you, the said Scheibers, and each of you, release of record the mortgage, which is

recorded in the office of the county recorder of the county of Sacramento, in Book 31 of Mortgages, at page 210, in your favor, upon the lands situated in the county of Sutter, State of California, and more particularly described as follows, to wit:

Beginning at a point on the left bank of the Feather River [43] fifteen chains and eighty (15.80) links below the south west corner of the so-called Nicolaus Allgier Tract; running thence down stream following the meanderings of said river to the point where the western boundary line of lot two (2) of the New Helvetia Rancho intersects said river; thence south fifteen (15) degrees and eight minutes east following said boundary line fourteen chains and forty-four (14.44) links; thence south sixty-four (64) degrees east, six chains and forty-four (6.44) links; thence south seventy-eight degrees and thirty minutes east twenty-four chains and fourteen (24.14) links; thence south fourteen (14) degrees and thirty (30) minutes west, fifteen chains and ninety (15.90) links; thence south forty degrees (40) east, forty-eight chains and seventy (48.70) links; thence east two chains and forty-five (2.45) links; thence north fifty (50) degrees east, thirty-eight chains and eleven (38.11) links to a point on the extended rear line of said Nicolaus Allgier Tract, fifteen chains and eight (15.08) links distant from the south east corner of the same; and thence north thirty-nine (39) degrees and thirty-six (36) minutes west eighty (80) chains to the place of beginning. Also, the north east quarter of section twenty-four (24), in township twelve (12) north, range three (3) east, Mount Diablo Base

and Meridian. The whole containing six hundred (600) acres of land, more or less, and being the whole of the so-called Nicolaus Allgier Ranch situated below the town of Nicolaus, bounded on the east by the farms of P. Straugh and Phil. R. Drescher, on the north by the Redfield farm, on the west by the Feather River, and on the south by the farms of Claus Peters and John Schwall, and being the same land described in a deed recorded in the office of the county recorder of Sutter County, California, in Book 6 of Deeds, at page 23, Sutter County Records.

And the undersigned herewith tenders to you, the said Scheibers [44] and each of you, a release of said note and mortgage prepared for signature and acknowledgment, so as to entitle the same to be put of record, and demands that you execute and acknowledge the same.

The undersigned also hereby offers to return to you, and each of you, everything of value she has received from you, and each of you, by virtue of said contract and transaction hereinbefore mentioned.

The undersigned does offer to you, and each of you, to do all other acts or things that are required of her in order to completely rescind the said transaction referred to, and does hereby offer to restore to you everything of value which she has received from you, or any of you, under said contract or transaction, upon condition that you, and each of you, do likewise.

The undersigned also offers to return, and hereby tenders to you, the said Scheibers, and each of you, one certain warrant No. 225, for the sum of five

thousand, one hundred six and forty-three one hundredths dollars (\$5,106.43), issued by Reclamation District No. 1001, as payment by said Reclamation District for one certain levee erected by you, or your predecessors in interest on said premises.

The undersigned also hereby tenders to Joseph Scheiber and Frances Scheiber, his wife, Morris Scheiber and Emma Scheiber, his wife, and John Scheiber and Anna Scheiber, his wife, the sum of \$282, received by the undersigned as payment for a right of way from the county of Sutter, for one certain county road running through the said premises, and the undersigned further demands that you, the said Scheiber and each of you, indemnify her for, or assume one certain note and mortgage which the undersigned has heretofore executed, payable and secured to the Pacific Mutual Life Insurance Company of California, a corporation, for the sum of twenty thousand dollars (\$20,000).

YOU AND EACH OF YOU, WILL FURTHER TAKE NOTICE that the undersigned [45] demands the return of all moneys paid by her to you, and each of you, or any of you, in connection with the above transaction, and the cancellation and nullification and satisfaction of any indebtedness now existing from the undersigned to you, or each of you, or any of you, as a result of said contract or transaction.

Dated Mar. 11th, 1912.

(Signed) ISABELLE GARWOOD.

That on the 26th day of March, 1912, the plaintiff herein commenced an action in the Superior Court

of the State of California, in and for the county of Sutter, against the defendants herein, said suit being numbered 1338, for the recovery of the sum of thirty-five thousand dollars damages claimed by her upon the identical transaction set forth in her complaint herein and for the recession of the contract of sale entered into between plaintiff and defendants referred to in her complaint herein, and for the cancellation of the note and mortgage, referred to, in paragraph thirteen of this answer, and for the indemnification of plaintiff for the amount of the mortgage debt of \$20,000, due to the Pacific Mutual Life Insurance Company of California, assumed by her as a part of the purchase price of said property.

That, thereafter, and on the 18th day of April, 1912, the defendants in said action, being the same defendants named in this action, appeared in said Superior Court and demurred to said complaint on general grounds, and thereafter, on the 31st day of May, 1912, and before any ruling had been made by said Superior Court on said demurrer, plaintiff filed an amended complaint in said cause containing practically the same allegations as contained in her original complaint; that thereafter, and on the 31st day of May, 1912, the defendants appeared in said cause and demurred to said amended complaint on general [46] grounds, and on the 10th day of June, 1912, the said Court overruled said demurrer and gave defendants ten days in which to answer the said amended complaint of plaintiff. On the 19th day of June, 1912, the defendants made and filed their answer to said amended complaint, and on the 28th



day of June, 1912, plaintiff filed in said cause a demurrer to said answer, of defendants on general and special grounds, and also served and filed a notice that she would, on the 6th day of July, 1912, move the court to strike out certain specific portions of said answer. On the 6th day of July, 1912, the said Superior Court duly made and gave its order overruling the said demurrer of plaintiff to said answer of defendants and denied her said motion to strike out the whole or any part of said answer; that, thereafter, by stipulation of the parties to said suit, it was agreed that said court might on the 24th day of July, 1912, fix a date for the trial of said cause, and afterwards, by stipulation, the matter of fixing a date for said trial was continued until the 15th day of September, 1912. On the 12th day of September, 1912, the said action, without notice to defendants, was dismissed by plaintiff and a judgment of dismissal entered therein by the clerk of said court.

## XX.

That these defendants allege that by reason of the election of plaintiff to rescind the contract made between her and these defendants, and referred to in the next preceding paragraph and that by reason of serving upon said defendants the said notice set out in said last named paragraph, and that by reason of the commencement and prosecution of the action in said Superior Court of Sutter County, mentioned and referred to in paragraph nineteen of this answer, she is estopped and debarred from bringing or prosecuting this action in this court.

WHEREFORE, these defendants pray this Honorable Court to [47] be hence dismissed with their reasonable costs and charges in this behalf and for such orders as may be meet and proper in the premises.

ARTHUR E. MILLER and

A. H. HEWITT,

Attorneys for Defendants.

State of California,

County of Sutter,—ss.

Morris Scheiber, being duly sworn, deposes and says, that he is one of the defendants named in the above and foregoing answer; that he has read the said answer and knows the contents thereof; that the same is true to the knowledge of deponent, except as to the matters therein stated to be alleged on information or belief, and that as to those matters he believes it to be true.

MORRIS SCHEIBER.

Subscribed and sworn to before me this 25th day<sup>\*</sup> of May, 1914.

[Seal]

A. H. HEWITT,

Notary Public in and for the County of Sutter,

State of California. [48]

(Here follows affidavit of service.)

[Endorsed]: Filed May 26, 1914. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [49]

[Title of Court and Cause.]

**Stipulation Waiving Jury.**

It is hereby stipulated by and between the respective parties to the above-entitled action that said action may be set down for trial by the court to be heard and tried by the Judge sitting as a court without a jury, the Court to hear and determine all questions of law and fact without a jury.

And it is stipulated and agreed by and between the respective parties that in the event of judgment for one party the other party has a perfect right to appeal from said judgment and that in the event of an appeal taken by one of the parties the other party will not raise any objection to said appeal on any point of law based on the fact that said cause was heard by the court without a jury.

LLOYD MACOMBER,  
Attorney for Plaintiff.

Dated Nov. 9, 1914.

A. E. MILLER and  
A. H. HEWITT,  
Attorneys for Defendants.

[Endorsed]: Filed Nov. 9, 1914. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [50]

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[Title of Court and Cause.]

**Answer to Amendment to Complaint.**

Come now the defendants, in the above-entitled action, and answering the amendment to the bill of complaint of plaintiff herein for grounds of answer,

admit, deny and allege as follows:

Defendants deny that plaintiff has been defrauded in any manner or at all by any representations of defendants or their agents, or either thereof; deny that said defendants and their agents, or either or any thereof, ever represented to plaintiff that said land consisted of six hundred acres, or that said land was all first class alfalfa land, then capable or at any time capable of producing five or six or any number of cuttings to the year, or that it would cut eight to ten tons to the acre each season;

Defendants deny that they or their agents or either thereof, ever represented to plaintiff that all of said land, referring to the land sold to plaintiff and described in the complaint herein was clear and level or clear or level, and suitable then for raising alfalfa; deny that they or either of them ever represented to plaintiff that two hundred and fifty acres of said land were at that time or any time planted to alfalfa, or growing and producing or growing or producing alfalfa; deny that they or either of them ever represented to plaintiff that the balance and remainder or balance or remainder [51] of said six hundred acres or any number of acres, not at that time planted to alfalfa, could then be planted to alfalfa; deny that they or either of them ever represented to plaintiff that all the conditions or any of the conditions were suitable for such use being immediately made of all of said land or that the said remaining three hundred acres or any number of acres could be immediately used for alfalfa, in any manner or at all;

Defendants deny that they and their agents, or

either thereof, ever represented to plaintiff that all of said land which they were selling to plaintiff was protected from overflow by levees.

Defendants deny that they and their agents or either thereof, ever represented to plaintiff that all of said land which they were selling plaintiff was what is known as river bottom land or what was known as subirrigated land; deny that they and their agents or either thereof, ever represented to plaintiff that the water from Feather River percolated through said land to such an extent or to any extent that it furnished water to the roots of the alfalfa, thereby rendering irrigation unnecessary to the growing of alfalfa; deny that they and their agents or either thereof, ever represented to plaintiff that either with or without irrigation, said land would produce five or six cuttings of alfalfa every year.

Defendants deny that certain portions or any portions of said land sold by them to plaintiff were not as represented by them to plaintiff in every point and particular; defendants deny that two hundred acres or any number of acres of said land were not as represented by them to plaintiff in respect to overflow and in respect to subirrigation and productive qualities, or in respect to either of said matters; deny that two hundred acres of said land, the same being the one hundred and sixty acres in the southerly portion of said tract, and the forty [52] acres lying just north of the same referred to in the amendment to the bill of complaint of plaintiff, were not as represented by them to plaintiff.

They admit that a portion of said land has been



covered with water during a portion of the flood seasons of each year, prior to the year 1914, and they allege that before plaintiff purchased said land, she knew of such fact.

Defendants deny that they or their agents, or either thereof, ever represented to plaintiff that said land was entirely free from flood waters, and they allege that plaintiff had actual knowledge prior to her purchase of said lands, that said lands were situated in a Reclamation District, and that such district was formed to protect said lands, and other lands of the district from overflow during the flood seasons of each year.

Defendants deny that it is impractical and impossible or impractical or impossible to raise alfalfa on land which during the winter time is submerged with water continuously for ten days or less.

Defendants deny that the nature of the soil of the two hundred acres referred to in plaintiff's Amendment to her bill of complaint, or of any portion of said entire ranch is such that water from the river does not penetrate it or that it does not have sufficient moisture to produce alfalfa in the way it was represented to do by defendants and their agents or by either thereof.

Defendants deny that the two hundred acres of said land referred to in plaintiff's said Amendment to her bill of complaint, or any portion of said two hundred acres is unsuited for raising alfalfa, or that any alfalfa planted by plaintiff on said land died because of the unsuitableness of the land for alfalfa. [53]

Defendants are unable to state the source of the information of plaintiff to the effect that they purchased said land less than three years prior to the date of the sale thereof to plaintiff, but in this regard, they assume that her statement of the time of purchase is fully as accurate as other statements made in her complaint.

Defendants allege that they purchased the land sold by them to plaintiff described in the complaint and more definitely described in the answer herein from the Pacific Mutual Life Insurance Company of California, on the 15th day of December, 1889, the contract for which purchase was recorded in the office of the recorder of the county of Sutter, State of California, on the 9th day of November, 1901, in Book 30 of Deeds, at page 124, and that the market value of said land at the date of the sale thereof to plaintiff exceeded the sum of seventy-five thousand dollars, and that the market value of the same, at the time of filing the Amendment to the bill of complaint of plaintiff, to wit, on the — day of July, 1915, exceeded the sum of one hundred and twenty thousand dollars.

Defendants deny that any of said land sold by them to plaintiff was otherwise than as represented by them; and they deny that said plaintiff has been damaged in the sum of thirteen thousand dollars, or any other sum whatever, by reason of such sale or otherwise or at all.

WHEREFORE, these defendants pray this Honorable Court to be hence dismissed with their reason-

able costs and charges in this behalf, and for such order as may be meet in the premises.

ARTHUR E. MILLER and  
A. H. HEWITT,  
Attorneys for Defendants. [54]

State of California,  
County of Sutter,—ss.

John Scheiber, being duly sworn, deposes and says: That he is one of the defendants named in the above and foregoing answer to the Amendment of Plaintiff to her bill of complaint filed herein; that he has read the said answer and knows the contents thereof; that the same is true to the knowledge of deponent, except as to the matters therein stated to be alleged on information or belief, and that as to those matters he believes it to be true.

JOHN SCHEIBER.

Subscribed and sworn to before me this 12th day of July, 1915.

[Seal] A. H. HEWITT,  
Notary Public, in and for the County of Sutter, State  
of California.

(Here Follows Affidavit of Service.)

[Endorsed]: Filed July 13, 1915. Walter B. Mal-  
ing, Clerk. [55]

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[Title of Court and Cause.]

**Amendment to Complaint.**

Leave of Court being first had and obtained, plaintiff in the above-entitled action files this, her Amendment to the complaint in said action, and hereby

amends said complaint by filing an additional paragraph in said complaint, which additional paragraph plaintiff designates as paragraph No. 10-A.

No. 10-A.

Plaintiff has been further defrauded by defendants in this action, in this, to wit, said defendants and their agents represented to plaintiff that said land consisted of 600 acres, all first class alfalfa land, then capable of producing five and six cuttings to the year, and that it would cut eight to ten tons to the acre each season, and plaintiff then and there believed all that was told her by defendants and their agents in respect to said land and purchased the same purely by reason of the fact that she believed it to be of the character represented.

Defendants and their agents represented to plaintiff that all of said land which they were then selling the plaintiff, was clear and level and suitable then for the raising of alfalfa, [56] and that two hundred and fifty acres of said land was at that time planted to, and growing and producing alfalfa, and that the balance and remainder of said six hundred acres, that is the remaining three hundred and fifty acres, not then planted to alfalfa, could be then planted to alfalfa, and that all the conditions were suitable for such use being immediately made of all of said land and that the said remaining three hundred acres could be immediately used for alfalfa, the same as the adjoining land upon which alfalfa was then growing.

That said defendants and said defendant's agents represented to plaintiff that all of said land which they were selling her was protected from overflow by

levees, when in truth and in fact said land was not protected from overflow by levees, as will more particularly appear hereafter.

That defendants and defendant's agents represented to plaintiff that all of said land which they were selling plaintiff was what is known as river bottom land and was what is known as subirrigated land, that is, said defendants and defendant's agents represented to plaintiff that the water percolated through said land from the Feather River to such an extent that it furnished water to the roots of the alfalfa and thereby rendered irrigation unnecessary, so that without irrigation alfalfa could be raised upon said land to such an extent as to yield five and six cuttings of alfalfa every year.

That a certain portion of said land sold to plaintiff is not as it was represented, as just hereinabove alleged, and the portion of said land which was not as represented in respect to freedom from overflow and in respect to [57] subirrigation and productive qualities is as follows, to wit, 200 acres the same being the 160 acres in the southerly portion of said land which said 160 acres is described as the Northeast quarter of section 24 in township 12, north range 3 east, M. D. M., and also the 40 acres of land lying just north and slightly west of said 160 acres, that is to say, the 200 acres of the land sold to plaintiff lying to the extreme southeasterly end of the tract and the farthest from the river is not as it was represented to be by said defendants and their said agents.

That so far from being as it was represented to plaintiff by said defendants and their said agents,



said 200 acres of land, during the winter time, has always been covered with water to considerable depth for periods lasting continuously for more than 10 days and that such inundation is absolutely fatal to alfalfa roots, and it is impracticable and impossible to raise alfalfa on land which, during the winter time is submerged with water continuously for more than 10 days; and that so far from being as represented to plaintiff by defendants and their agents that said 200 acres is not what is known as river bottom land and is not subirrigated, and is not capable of producing alfalfa without irrigation and this, for the reason that the nature of the soil of said 200 acres, is such that the water from the river does not penetrate it and it does not have sufficient moisture to produce alfalfa in the way it was represented to do by defendants and their said agents.

That plaintiff, since purchasing said land, planted alfalfa in a portion of said 200 acres just hereinbefore mentioned which said land, as is herein alleged, is unsuited for raising alfalfa and said alfalfa did not grow and died [58] out and said dying out of said alfalfa was the result of the unsuitableness of the land for alfalfa as is hereinbefore just alleged.

That said two hundred acres, so unsuited to the raising of alfalfa by reason of the overflows aforesaid, was at the time of purchase by plaintiff, not worth more than sixty (\$60) dollars per acre at the outside, as said land never was used for alfalfa, but always has been used as grain land.

That the defendants in this action, at the time they purchased said land, less than three years previously,

paid much less than sixty (\$60) dollars per acre, and said price represented a fair valuation thereon, and the market value of said land, was in no ways enhanced during said three years.

That since the purchase of said land by plaintiff, said two hundred acres have been reclaimed from the overflow of the waters of the aforesaid Bear River and Sacramento River by large and extensive and highly expensive reclamation work, and in so far as overflow is concerned, said land has been protected from overflow, and said work and expense of protecting said land from overflow has been necessary and compulsory upon plaintiff, and has cost plaintiff in assessments upon said land so purchased, more than twenty thousand (\$20,000) dollars, and in order to reclaim said land from overflow and place the same in respect to overflow in a condition such as it was represented to be by defendants and their agents, plaintiff has had to expend the sum of more than twenty thousand (\$20,000) dollars.

That by reason of said two hundred acres of land not being as represented by defendants, and by reason of its being worth only sixty (\$60) dollars per acre instead of one hundred and twenty-five (\$125) dollars per acre, which plaintiff paid [59] for it, plaintiff has been damaged thereby in the sum of thirteen thousand (\$13,000) dollars.

WHEREFORE, plaintiff prays that the damage of thirteen thousand (\$13,000) dollars, alleged in this Amendment of the Complaint, may be adjudged and awarded in this action, and that plaintiff may have judgment for thirteen thousand (\$13,000) dollars

against said defendants in said action, in addition to the amount prayed for in said complaint as originally filed, and together with interest on said \$13,000.

LLOYD MACOMBER,

Attorney for Plaintiff.

Dated June 23d, 1915. [60]

State of California,

City and County of San Francisco,—ss.

Isabelle Garwood, being first duly sworn, deposes and says: That she, this affiant, is the plaintiff mentioned in the within, foregoing, and hereto attached amendment to complaint; that she has read said amendment to complaint, and knows the contents thereof, and that the same is true of her own knowledge, save and except as to those matters which are therein stated upon her information and belief, and that as to those matters that she believes it to be true.

ISABELLE GARWOOD.

Subscribed and sworn to before me this 23d day of June, 1915.

[Seal]

J. D. BROWN,

Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed Jul. 15, 1915. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [61]

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[Title of Court and Cause.]

**Dismissal as to Certain Parties.**

Whereas the plaintiff in the above-entitled action desires to prosecute said action against Joseph Scheiber, Morris Scheiber, and John Scheiber, but does not

desire to prosecute said action against Frances Scheiber, nor Emma Scheiber, nor Anna Scheiber,

Now, therefore, plaintiff in the above-entitled action hereby dismisses said action in so far as it affects said defendants Frances Scheiber, or Emma Scheiber, or Anna Scheiber, and as to said three parties the clerk of the court is authorized and instructed to enter dismissal of record in said action, but with the proviso and understanding that said action will continue in full force and virtue against Joseph Scheiber, and Morris Scheiber, and John Scheiber, and as to said last three named defendants be in no wise affected by this dismissal as to the others.

Dated May 3d, 1915.

LLOYD MACOMBER,

Attorney for Plaintiff.

[Endorsed]: Filed Jul. 21, 1915. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [62]

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At a stated term to wit, the November term, A. D. 1915, of the District Court of the United States of America, in and for the Northern District of California, Second Division, held at the courtroom in the city and county of San Francisco, on Friday, the 18th day of February in the year of our Lord, one thousand nine hundred and sixteen. PRESENT: The Honorable WILLIAM C. VAN FLEET, District Judge.

No. 15,701.

ISABELLE GARWOOD,

vs.

JOHN SCHEIBER et al.

**Order That Judgment be Entered.**

In accordance with the decision of Honorable Wm. H. Sawtelle, District Judge, it is ordered that judgment be entered in favor of defendants and for costs.  
[63]

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*In the District Court of the United States, in and  
for the Northern District of California, Second  
Division.*

No. 15,701.

ISABELLE GARWOOD,

Plaintiff,

vs.

JOSEPH SCHEIBER, MORRIS SCHEIBER,  
JOHN SCHEIBER,

Defendants.

**Judgment.**

This cause having come on regularly for trial on the 16th day of July, 1915, before the Court sitting without a jury, a trial by jury having been specially waived by stipulation filed; Lloyd Macomber, Esq., appearing as attorney for plaintiff and A. H. Hewitt and Arthur E. Miller, Esq., appearing as attorneys for defendants; and the trial having been proceeded with on the 21st, 24th, 26th, 27th and 28th days of July, all in said year and oral and documentary evidence on behalf of the respective parties, having been introduced and the cause having been submitted to the Court for consideration and deci-



sion, and the Court, after due deliberation, having ordered that judgment be entered in favor of the defendants:

Now, therefore, by virtue of the law and by reason of the premises aforesaid, it is considered by the Court, that plaintiff take nothing by this action and that defendants go hereof without day; and that said defendants do have and recover of and from said plaintiff their costs herein expended, taxed at \$835.30.

Judgment entered February 18, 1916.

A true copy. Attest:

[Seal]

WALTER B. MALING,

Clerk.

[Endorsed]: Filed Feb. 18, 1916. Walter B. Maling, Clerk. [64]

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[Title of Court and Cause.]

**Clerk's Certificate to Judgment-roll.**

I, W. B. Maling, Clerk of the District Court of the United States for the Northern District of California, do hereby certify that the foregoing papers hereto annexed constitute the Judgment-roll in the above-entitled action.

Attest my hand and the seal of said District Court, this 18th day of February, 1916.

[Seal]

WALTER B. MALING,

Clerk.

[Endorsed]: Filed Feb. 18, 1916. Walter B. Maling, Clerk. [65—66]

[Title of Court and Cause.]

**Engrossed Bill of Exceptions.**

Be it remembered that the above-entitled action duly came on for trial in the above-entitled court, in the Second Division thereof, the Honorable Wm. Sawtelle, Judge presiding, sitting without a jury (a jury trial having been duly waived by stipulation in writing duly filed, which said stipulation reserved all rights of appeal to the parties in the event that either should be dissatisfied and wished to appeal or prosecute a writ of error), on Friday, the 16th day of July, 1915, at the hour of ten o'clock A. M. of said day, the trial of said action being resumed on Wednesday, the 21st day of July, 1915, and further resumed on Saturday, the 24th day of July, 1915, and further resumed on Monday, the 26th day of July, 1915, and further resumed on Tuesday, the 27th day of July, 1915, and further resumed on Wednesday, the 28th day of July, 1915, at the termination of which said day the Honorable Wm. H. Sawtelle, Judge presiding, stated to counsel for the respective parties that he was compelled to depart at once for his own district in Arizona, and made the request of counsel that they stipulate that all further testimony be taken by a commissioner selected by them for that purpose, and that, [67] after the taking of testimony should be completed, a transcript of the same, together with the record of the action and the briefs and written argument of counsel, be sent to him at his home in Arizona for submission, and that such judgment as he might render

in said action might thereafter be entered by the Honorable Wm. C. Van Fleet, Judge of the United States District Court for the Northern District of California; this stipulation was duly entered into by counsel for the respective parties, Mr. Lloyd Macomber appearing as counsel for the plaintiff, and Mr. A. H. Hewitt and Mr. Arthur E. Miller appearing as counsel for the defendants; evidence, both oral and documentary was offered and introduced by each of the respective parties to said action, and, pursuant to said stipulation, the entire record in said action was thereafter forwarded by the clerk of the court to the Honorable Wm. H. Sawtelle, at his home in Arizona, and the cause submitted to him for his determination and decision; that thereafter the said Honorable Wm. H. Sawtelle made his decision in said action in favor of the defendants therein, without findings or written opinion, and communicated his judgment and decision to the said Honorable Wm. C. Van Fleet, who thereafter, pursuant to said stipulation as aforesaid, caused said judgment to be entered in said action on Friday, the 18th day of February, 1916, against the plaintiff and in favor of the defendants in said action.

The plaintiff is dissatisfied with said decision and judgment, and appeals therefrom and from every part thereof; and plaintiff accordingly proposes the following bill of exceptions for use upon said appeal or writ of error as aforesaid.

Plaintiff excepts to said judgment and decision upon the ground that the evidence is insufficient to justify said decision, and that said decision is against

law, and complains that said decision is entirely unsupported by the evidence and is contrary to the evidence, and complains of said decision as error, and excepts thereto, and [68] assigns this exception as

#### EXCEPTION NUMBER ONE,

and as for the particulars in which the evidence is insufficient to justify said decision, and as for the particulars in which said decision is contrary to the evidence, plaintiff specifies as follows:

The evidence shows that the land involved in the issues of this action was sold to the plaintiff by the acre and not in gross.

The evidence shows that said land was sold to the plaintiff, and that she bought the same, as six hundred acres at the agreed price of one hundred and twenty-five dollars per acre.

The evidence shows that said land was represented to plaintiff and sold to her as six hundred acres of first-class alfalfa land, which was protected from overflow by levee; and that plaintiff bought said land upon and by reason of those representations. The evidence shows that not more than two hundred and fifty acres were as represented.

The evidence shows that instead of there being six hundred acres, there was an absolute shortage of seventy acres.

The evidence shows that instead of there being six hundred acres to said land of a character best adapted to the raising of alfalfa, there was only four hundred and fifty acres which could be used for any agricultural purpose whatever, and that there was

not more than four hundred and fifty acres of said land which had any agricultural or commercial value. The evidence shows that not more than four hundred and fifty acres of said land had ever been used by defendants for agricultural purposes, and that there was not more than four hundred and fifty acres which could be used for any agricultural purpose.

The evidence shows that of the four hundred and fifty acres which might be used for agricultural purposes, not more than two hundred [69] and fifty acres could be used for growing alfalfa, and that the remaining two hundred acres was subject to overflow to such an extent that the raising of alfalfa thereon was a commercial impossibility.

The evidence shows that of the four hundred and fifty acres of said land which plaintiff actually received which was capable of being used for agricultural purposes, the two hundred acre portion thereof which was subject to overflow was not worth more than sixty dollars per acre.

The evidence shows that defendants and their agents took plaintiff upon said land, but that in so doing they were careful to show her only the portion thereof which could be used for agricultural purposes, and purposely refrained from showing her the swamp land outside of the old levee, and purposely refrained from showing her that seventy acres of said land was at that time beneath the channel of a navigable river, and for that reason not their property and impossible of being conveyed by them, and said defendants purposely refrained from advising plaintiff of the fact that not more than four hundred



and fifty acres of said land could be used for any agricultural purpose.

The evidence shows that plaintiff has been damaged in the sum of more than twenty-one thousand dollars which she has had to pay in reclamation assessments to reclaim and protect from overflow land which in said sale to her was represented to her as being free from overflow.

The evidence shows that notwithstanding this expenditure of money for reclamation purposes she still has only two hundred and fifty acres of land which is as was represented to her.

The evidence shows that said land was represented to plaintiff as being subirrigated (meaning self-irrigated), and that no irrigation would be necessary for the raising of alfalfa; and the evidence shows that the same two hundred acres which were hereinbefore stated [70] to be worth but sixty dollars per acre, that is to say, the two hundred acres at the southeasterly most end of the tract has so little subirrigation that it is not commercially practicable to attempt to raise alfalfa thereon without artificial irrigation.

The evidence shows that the plaintiff, at the time the said land was sold to her, was a woman without any business experience or understanding, and without any experience or understanding of any character in reference to land or farming, and without any experience or understanding whatever in reference to matters appertaining to said land or the purchase thereof, and that she fully believed and relied upon the representations of defendant's agents; and the

evidence shows that these facts were well known to defendants' said agents.

The evidence shows that in purchasing said land plaintiff was guided by and acted upon the advice and counsel of a friend and adviser, one F. I. Ramos, with whom plaintiff occupied a confidential relationship—with whom she was engaged to be married—which fact was at all times well known to defendant's said agents who represented them in said sale; and the evidence shows that, in so far as the selection of said land was concerned, said F. I. Ramos was the confidential agent of the plaintiff, which said fact was at all times well known to defendant's said agents.

The evidence does not show that said F. I. Ramos was the agent of the plaintiff for any purpose whatsoever other than to advise her in respect to what land she should or should not buy; and the precise extent of the power and agency of said F. I. Ramos for the plaintiff was well known to defendants' said agents.

The evidence shows that defendants' said agents bribed and corrupted plaintiffs' said confidential agent and adviser, said F. I. Ramos, by secretly paying to said F. I. Ramos the sum of fifteen hundred dollars, and that by reason of the said bribery and [71] corruption of plaintiff's said betrothed and confidential agent and adviser, plaintiff was misadvised and misled to her financial prejudice and damage in the sum and amount prayed for in her complaint.

The evidence shows that said land was represented

to plaintiff as being "River Bottom" land, and as being subirrigated; and the evidence shows that not more than the aforesaid two hundred and fifty acres were of that character.

The evidence shows that the said land is of the following character and value, and was of the following character and value at the date of said sale, that is to say:

(1) The two hundred and fifty acres of said land lying immediately east and south of the old levee is of a character practically the same as represented by said defendants' agents, and that said two hundred and fifty acres was at said time worth not more than the price plaintiff paid for it, to wit, one hundred and twenty-five dollars per acre.

(2) The two hundred acres lying at the southeasterly end of the said tract were not as represented by defendants' said agents, either in respect to overflow, or in respect to subirrigation, or in respect to the character of the soil, and said two hundred acres was at the time of said sale worth not more than sixty dollars per acre.

(3) That the remainder of said land, to wit, all of that which lies outside, or northwest of the old levee, is not as represented in any respect whatsoever, and is useless for any agricultural purpose, and is commercially worthless.

That all material evidence, bearing upon each and all of the foregoing specifications of particulars in which the evidence is contrary to the decision, and in which the evidence is insufficient to justify the

decision, and certain additional exceptions to the rulings of the Court upon admission of evidence, are as follows: [72]

**Testimony of H. H. Jones, for Plaintiff.**

H. H. JONES, a witness called upon behalf of the plaintiff, testified as follows:

My name is H. H. Jones. I reside in San Rafael. I am a licensed civil engineer and surveyor. On behalf of the plaintiff in this action I investigated a piece of property in Sutter County. I surveyed the exterior boundaries and determined its acreage, which work I did from the 15th to the 20th day of April of the year 1915. I have passed all the requirements of a licensed engineer and surveyor imposed by the law of this State, these requirements consist of various examinations and recommendations from other surveyors. I surveyed the ranch in Sutter County, which now belongs to Isabelle Garwood. This place is located in Sutter County; it lies in section 24, township 12 north, range 3 east. I drew a map of the place. I obtained the information which enabled me to survey the place from various sources from survey records, as from the United States Government records in the Appraiser's Building here in San Francisco, and from the county surveyor, or his deputy in Yuba City, and also by having the lines pointed out to me by various people who knew the lines. I had a young man with me by the name of Peter; he was the principal man, and as I progressed with the lines, as those lines coincided with Government records in the description which I got from the Government, and also with the deed, I concluded that

(Testimony of H. H. Jones.)

those were the lines of the ranch. I had a description taken from the deed; a description of the ranch in general. There were two descriptions. The deed I believe was from Scheiber to Garwood. I went all the way around this particular property. There was at that time living upon the place a man by the name of Duff, whom I believe is the lessee. I know the house in which [73] Mr. Duff lives. The house was located somewhere near the south central portion of the yellow colored part of the map; I found it located approximately in there. Those lines on the map which you indicate represent levees. The old levee at this point bends around. Mr. Peter was familiar with the ground around there. Yes, I know whose land it is that adjoins the Garwood place on the south side; it is Saylor's place and Peter's place. One piece belongs to Scheiber; one piece belongs to Saylor. That piece immediately on the north belongs to Straugh, and one piece owned by Drescher. The young man who helped me make the survey is an old resident there; he was acquainted with Mr. Duff, the man on the ranch. Peter and I together met Mr. Duff. I knew I was on the right piece of property; I have located the official map of Sutter County and noted and recognized where the old and new levees come together. The map which I prepared of the Garwood land, and which you now have there on the board is according to the official map of Sutter County. The square, which you indicate at the southeast end of the land, is the northeast quarter of section 24, township 12 north, range 3 east.



(Testimony of H. H. Jones.)

I computed the area of this ranch, the land is all fenced. Yes, sir, I secured the northeast corner of the northeast quarter of section 24, township 12 north, range 3 east. Yes, sir, that is the corner from which you indicate on the map. In surveying the ranch I located that corner and then ran north along the easterly boundary of that property to the point which you indicate, proceeding in a northerly direction. Yes, sir, I then intersected the southerly line of the town of Nicolaus filed in the records there, and followed that along 125 or 130 feet until I came to the long line of the property, which runs to the river. I then followed that line to the levee to the northwest corner of the property, then I intersected the [74] levee. I followed the line of the levee back to a point where that easterly line of the ranch was intersected, and then again to the easterly corner of the old levee I proceeded in a northeasterly direction.

The COURT.—Q. Indicate on the map the direction that you ran. I think I can understand it better, if Counsel have no objection.

Mr. MACOMBER.—Certainly not.

A. I followed this line to an intersection of the old levee and thence followed the old levee to an intersection of the levee and the northwest line of this property. I came back then to a point of number along that intersection.

The COURT.—Q. That is the east line?

A. Yes, sir; I came back where the east line of the Garwood property would have intersected the levee just at this point, which is the intersection of the

(Testimony of H. H. Jones.)

center line of the old levee, and the easterly line of the property. That constituted the survey of this side. I then went back to this point to the northwest corner and followed to the westerly and southerly boundary of the tract to a corner in the westerly boundary of the property, thence along this line on the west, and thence to the intersection line to a point in the northerly line of the northeast quarter of section 24, township 12 north, range 3 east. I followed that line to the point of the beginning, which was my survey.

Mr. MACOMBER.—Q. Have you the description which you checked up, that which I gave you?

A. I do not think I have it with me.

The COURT.—Is that description taken from the deed? Does the deed contain that description?

Mr. MACOMBER.—I gave the gentleman a description which was the description which is a copy of the description in the deed, and I would like to have him identify it and have it admitted in evidence so that no dispute can possibly arise in the future as [75] to whether or not he was on the parcel of land.

Q. Will you glance over that, Mr Jones. I hand you, Mr. Jones, merely a description of the land, as one description which appears in the deed which the plaintiff received from the defendants and the other description there is the description which you embodied in your answer.

Mr. HEWITT.—As I understand it both descriptions are in the answer, or rather the first description

(Testimony of H. H. Jones.)

is in the complaint and the second description is in the answer.

Mr. MACOMBER.—Yes.

The COURT.—What is the difference between the two?

Mr. HEWITT.—One is a little more definite than the other.

Mr. MACOMBER.—The description which appears in the complaint is the description which was in the deed to the land which the plaintiff received. The other description was a description given me voluntarily by Mr. Hewitt which he said was a better description of the land and which he alleged in his answer. I think the description contained in the answer embodies more land, if I am not mistaken.

Mr. HEWITT.—If the Court will permit me to answer the question, I will.

The COURT.—Yes.

Mr. HEWITT.—Upon reading the description in the deed it starts in at a certain point—in fact it is not so very long and I think the Court can get it quicker and better by reading it. The description in the deed to the property to Miss Garwood which is in Sutter County reads as follows:—Before proceeding may I ask a question?

The COURT.—Yes.

Mr. HEWITT.—Q. Is that Feather River?

A. Yes, sir.

Q. Is that the cut-off?

A. The cut-off is further down here. [76]

(Testimony of H. H. Jones.)

(Pointing.) This point is where the old river channel is. (Pointing.)

(The description is as follows:)

“Beginning at a point on the left bank of the Feather River fifteen chains and eighty (15.80) links below the southwest corner of the so-called Nicolaus Allgier Tract; running thence down stream following the meanderings of said river to the point where the western boundary line of lot two (2) of the New Helvetia Rancho intersects said river; thence south fifteen ( $15^{\circ}$ ) degrees and eight (8') minutes east, following said boundary line fourteen chains and forty-four (14.44) links; thence south sixty-four ( $64^{\circ}$ ) degrees east six chains and forty-four (6.44) links; thence south seventy-eight ( $78^{\circ}$ ) degrees and thirty minutes (30') east twenty-four chains and fourteen (24.14) links; thence south fourteen ( $14^{\circ}$ ) degrees and thirty (30') minutes west, fifteen chains and ninety (15.90) links; thence south forty degrees ( $40^{\circ}$ ) east forty-eight chains and seventy (48.70) links; thence east two chains and forty-five (2.45) links; thence north fifty ( $50^{\circ}$ ) degrees east thirty-eight chains and eleven (38.11) links to a point on the extended rear line of said Nicolaus Allgier Tract, fifteen chains and eight (15.08) links distant from the southeast corner of the same; and thence north thirty-nine ( $39^{\circ}$ ) degrees and thirty-six (36') minutes west eighty (80) chains to the place of beginning. Also the northeast quarter of section twenty-four (24) in township twelve (12) north, range three (3) east, Mount Diablo Base and Merid-

(Testimony of H. H. Jones.)

ian the whole containing six hundred (600) acres of land, more or less, and being the whole of the so-called Nicolaus Allgier Ranch situated below the town of Nicolaus, bounded on the east side by the farms of P. Straugh and Phil R. Drescher [77] on the north by the Redfield farm, and on the west by the Feather River, and on the south by the farms of Claus Peters and John Schwall, and being the same land described in a deed recorded in the office of the county recorder of Sutter County, California, in Book 46 of Deeds, at page 23, Sutter County Records."

Mr. HEWITT.—Q. Is that the Feather River?

A. Yes sir.

Q. Is that the cut-off?

A. The cut-off is further down here. (Pointing.) This point is where the old river channel is. Yes, I have the old channel of the Feather River on the map; here it is. (Pointing.) That land between the two levees is a portion of the land in question. The levees do not meet on that property. Yes, I surveyed this land in reference to this area; north and west of this northeast quarter. I went all around it; I computed the acreage; I know the acreage. I surveyed the old levee from the point where the old levee intersects the northeasterly boundary of the ranch. I computed by accurate measurement the number of acres covered by the old levee. I surveyed the new levee over from the place where the new levee intersects the northeasterly boundary line of the ranch to the point where it intersects the



(Testimony of H. H. Jones.)

southerly line down the river. I measured the levee; I estimated the width of the levee; I computed the number of acres covered in the area lying between the two levees. I know the number of acres in that area. I estimated the number of acres that are covered by roads on the southwesterly boundary of the land, and the road running along the old levee. I know the number of acres covered by those roads.

The COURT.—Q. How many acres did you find in the property that you surveyed, including the land taken up by the roadway and the levees, or rather, within the exterior boundary. [78]

A. 535 acres.

Q. 535 acres?

A. Yes, sir, there are approximately 73 and 8/10th acres between the two levees. Yes, sir, by that description I surveyed the ranch. The metes and bounds as set forth in the deed checked up all right with the exception of a portion next to the river. That is the portion outside of the new levee. Yes, it checked up very well, that portion of the land which is inside of the levee; that is, the reclaimed portion of the land excluding roads and levees I found to be 450.365 acres. That includes the quarter section at the southeasterly portion of the land. Yes, sir, 450.365 acres in all. That is the net amount of land which can be used for agricultural purposes; that is the net amount of land inside the levee. I know of my own knowledge that that was the land owned by Isabelle Garwood in Sutter County. I

(Testimony of H. H. Jones.)

know of my own knowledge that that is the land concerning which this controversy is in regard to.

Cross-examination.

I located the section corner lying between 19, 16, 18, 24 and 31 from the Government notes which I obtained from San Francisco, and from the surveyor-general, and other data I also obtained from a Mr. Von Geldern in Yuba City. The corner lies on the south side very close to the fence. I could locate it from Government notes because there is a record. I could tell that that was the corner because there was a certain poplar tree lying on the south corner further to the east; the section line will be from stakes made by Mr. Von Geldern in a previous survey. I surveyed the distance from above the cross from the poplar tree; I have forgotten now what the distance is from the poplar trees. I know that point was coincident to the survey made by Mr. Von Geldern. Mr. Von Geldern gave me a little sketch of his notes, and I checked them out. I did not make any survey of the land lying west of the present artificial channel of Feather River; I did not [79] survey that portion for the reason that it was impossible, everything was under water; everything was submerged. I do not know when that channel was cut through there. The river bends about at this portion; that is, where the old channel used to bend; there is a cut-off there. I did not measure the distance of the old bend of the channel from the northeast corner of the ranch. It seemed

(Testimony of H. H. Jones.)

to be several hundred feet to the west of the east line. I did not go over the cut-off across the river. There was water on the land west of the artificial channel of the Feather River at that time, which was in April. The river was a little high. I was there five days. As to the lines on the south of the Scheiber property, I took them mainly from the description, also with the assistance of Mr. Peter, and also from talking with Mr. Duff. A description will point out the lines. Yes, a description will furnish the starting point. A good description will locate the starting point. A description would refer to a corner or post at the end of the line, that measuring between would coincide with the description. I found such a post. I did not use the west line of lot number 2 as a basis; I was able to locate it from my survey. I have got marks on that map which includes the west lines of lot 2 of New Helvetia, as far as it coincided with the new description. I endeavored to locate it upon the map of New Helvetia in the records and could not find anything satisfactory to base my survey on, so I used a more satisfactory survey to pass on my survey. The description which I had was the description in the deed from the Scheibers. The description which I had and used was the description in the deed from the Scheibers to Miss Garwood. One of the calls of that deed calls for a line running on the west line of lot 2 of New Helvetia. I did not find out where lot 2 of New Helvetia was, and I have not [80] indicated it on my map. The man who helped me and

(Testimony of H. H. Jones.)

who was one of the persons who pointed out the boundaries was a man by the name of Peter. I believe his initials are H. A.; he lives at Nicolaus. I stayed at his house for five days while I was making the survey. I do not know how long he has lived there; he told me it extended over a long number of years. I will not admit that my map does not correspond with the description of that deed of lot 2 of New Helvetia; it is correct as far as lot 2 of New Helvetia is concerned. I do not know whether the west line of lot 2 of New Helvetia runs on a north and south course. The description may be incorrect. I have simply followed the description there, and it shows just a portion of lot 2 of New Helvetia. I endeavored to locate New Helvetia and could not find it on any map, or anything to base a survey on. I found a fence line on lot 2 of that land, between Drescher's and Saylor's. I took a starting point between Saylor's and Drescher's and took the description as indicated on the map. I do not know where lot 2 of New Helvetia is located. I did not look it up any further when I could not find the thing of record. Yes, sir, there was a well-defined fence around the tract all the way. There was a place where there was nothing but fence posts along the line. That was up in the northwest corner. The fences were somewhat irregular, just wandered around and looked like somebody stuck it in. That was on the west side of the channel, on the left bank of the river. Yes, sir, on the left bank of the channel. There are no fences anywhere between the

(Testimony of H. H. Jones.)

two levees. I followed the approximate center line of each levee, with the exception of the large levee. Owing to the slope being different on the one side than the other, I was a little close to the big levee. No, sir, the big levee was not pointed [81] out to me as being the boundary of the land. I was compelled to take that. There was a fence all the way around this property. My lines ran right along the fence. There was a very well-defined fence on the river side of that road. I took that for my line and followed that in, and that line coincided with the outside of the road all the way. When proceeding from the levee on the southwesterly boundary line, I went along on my right-hand side of the road; that was the case right down to the quarter section all the way down. The road on the southwesterly boundary line of the ranch was entirely on this ranch. The road is 40 feet wide. There are 6.8 acres covered by the old levee. Yes, I estimated the number of acres covered by the new levee; the area of ground covered by the new levee is 10.41 acres at the water line of the river at that time. The area of the land lying between the two levees; that is, from toe to toe is 60.068.

The COURT.—Q. How do you reconcile that with your previous statement that there was 73 and a fraction acres between the levees?

A. I think he asked me that question in gross; that is, what was contained in that piece including the levee.

Q. Both or one of the levees?



(Testimony of H. H. Jones.)

A. I ran a certain line and computed a certain area. That would lie between the lines; that area between the lines and the area outside of my lines was 73 and some fraction, I believe; and this time he asked me for a net amount between the toes of that levee and there is some deduction to be made, of which amounts net to 60.068. If you will take the second figure from the first figure that will give the area of the levee.

Q. No, you have a difference of three acres?

I followed the meanders of the old levee from where it intersects the northeasterly boundary line of the ranch to the point where [82] it intersects the westerly boundary line. Any portion of the land outside of the old levee was completely cut off from the other portion by the levee, and if you should wish to go from one portion to the other you would have to go over the levee. I found some cleared land where the two levees converge; that is, at the lower end where they come close together. I surveyed the area of this land and found that there were 4.91. I noticed the character of the territory lying between the two levees; it was practically submerged. At the time I saw the land there was very little of it above water, and such as was above water, was covered with blackberry vines, and a very dense impenetrable jungle, and on the east side of the property along the levee there was an open pond of water running towards the west where there was some little high land, but besides that appearing over the water was one impenetrable jungle; which no

(Testimony of H. H. Jones.)

one could get through unless they had an ax to cut their way. Practically 8 per cent of the land had this impenetrable jungle; all the rest, lying between the two levees was open water; all except the cleared portion and the portion where there was an open pond. The cleared portion was slightly higher; that is the 4 and a fraction acres. Standing on the northeast corner of the ranch, where the old levee crosses the line, you can see across the pond of water. When I saw it it came up to the base of the trees on the other side; I should say it was 300 feet wide. The rest was just a jungle. That was the barrow pit made from making the levee. It may have been over the barrow pit. This was open water until it came to the forest, and it probably went into the forest too. Yes, I know that there was water beyond the barrow pit; I could see it. I do not know how deep it was. [83] I could see to the jungle; the water was so deep I do not know how deep the trees were standing in the water in the jungle. On the east side of the artificial channel, where the major portion of the ranch lies, the land had a fence around it. There was no fence on the northeasterly side of the ranch between the two levees. There was a fence on the southwesterly side between the two levees where the levees come close together; there was a barb wire fence there; it was intended for a fence, but it was not on the line at that point. There is a line given in chains in the description. From the back of the town of Nicolaus, down towards the river, 80 chains. That is, from this line up to

(Testimony of H. H. Jones.)

the northeast corner. I computed the acreage in the artificial channel and there was 62.957 acres. There was a large new levee just finished in the last two years, and there was the old levee at the west portion of the ranch, which ran to within 175 to 200 feet of the new levee. The levee is on this side; I did not cross to that side. There may be a small levee over there, but I did not go over there.

**Testimony of Albert J. Peter, for Plaintiff.**

ALBERT J. PETER, a witness called upon behalf of the plaintiff, testified as follows:

My name is Albert J. Peter. I reside at Nicolaus in Sutter County, California. I am familiar with this land, which you have just been talking about; that is, the ranch now owned by Isabell Garwood. I know it to be the ranch, which previous to the time of her owning it, was owned by the Scheiber brothers. I was born and raised right there. I am acquainted with the witness who was just on the stand. I met Mr. Jones when he came up there to survey; I assisted him in surveying the ranch. He went around that ranch; I went with him. It was the Garwood land that we surveyed; I am familiar with the property. [84]

**Testimony of T. J. Mulvany, for Plaintiff.**

T. J. MULVANY, a witness on the behalf of plaintiff, testified as follows:

My name is T. J. Mulvany. I reside at Nicolaus in Sutter County. I have resided in Nicolaus about 35 years. I am familiar with the land now owned by the plaintiff in this case. I have been familiar

(Testimony of T. J. Mulvany.)

with that land for about the same time that I have lived there. I have lived there since '77, which is a little longer than 35 years. In 1911 there was no new levee there, it was all subject to overflow when the river was high. I think about two years later a new levee was constructed along the river for the purpose of keeping the water off. The land is all subject to overflow during the winter months when the water was high, and during the summer probably as late as May. That land to my knowledge, within the time that I lived in the neighborhood, has never been used for agricultural purposes; it is wild, half covered with timber, sycamore trees, cottonwood, grape vines and along the river it is filled up with sand. I never knew of any cultivation of any kind on that particular piece. This new levee was not in existence in that year; it has been constructed since. I think it was constructed in 1913; around that time, 1913 or '14. I am positive, however, it was subsequent to 1911. The land outside of the levee is known as overflow land. It would not be possible to raise alfalfa on that land unless it is protected from the water and also cleared. The part that is now reclaimed by the new levee is yet subject to overflow from seepage. There are large portions of it, may be 10 acres or so, that have been excavated in building the old levee, and it was hauled out in times, probably six or eight feet deep. It would cost more to fill than it is worth. There is some good soil in there if filled. To remove the sycamore trees and grape vines, and put that land in

(Testimony of T. J. Mulvany.)

condition for [85] *for* cultivation, it would probably cost more than it is worth. As far as the levee is concerned, it is protected from overflow now. The alfalfa would not last at all; the water was several feet deep then. Maybe in June, if the late crop could be put in, it might grow—that is, provided, of course, the land was clear, because there was some good soil there. Until recently I have been the reclamation trustee of the district in which this land is situated.

**Testimony of Harry K. Brown, for Plaintiff.**

HARRY K. BROWN, a witness called upon behalf of plaintiff, testified as follows:

My name is Harry K. Brown. I reside in Woodland in this State. I visited the dairy farm, owned by three brothers by the name of Scheiber, in Sutter County. I cannot give the exact date of the first visit. I went up there once with Mr. Dike of the California Colonization Company some few weeks before the time I visited it for the purpose of getting an option on the place with a party who lived in Fresno, who was with me at the time. My second visit was on the 4th day of July in the year 1911. My purpose in visiting the ranch at that time was to obtain an option to sell it. I made all the arrangements as to the price of the land, the price of the hay, the price of the stock, and the parties promised to go to Sacramento the next day. They told Mr. Dike they would not give the option to me, but they made all the agreement to go to Sacramento and give the



(Testimony of Harry K. Brown.)

option to the California Colonization Company. They said there were 600 acres to the ranch; they said they would ask \$125 an acre for it; those were the terms that they put the place up to me,—600 acres at \$125 an acre.

At this point the witness was temporarily taken from the [86] stand, and Mr. A. L. Crane, a witness for and on behalf of the plaintiff, was called for the purpose of showing that plaintiff could not produce the written memorandum of the agreement between the vendors and their agents. A. L. Crane testified as follows:

**Testimony of A. L. Crane, for Plaintiff,**

My name is A. L. Crane. I reside at Applegate in this State. In 1911 I was the president of the California Colonization Company; I received a subpoena from this court directing me to come here and bring in the records, documents and all papers of the California Colonization Company in connection with this case. I have not done so; I do not know where such records, documents or papers are; I have no knowledge of them. The last time I saw them was in December, it was December 28th or 29th of 1911; from that time I have had no connection with the company. I do not know at what place or whereabouts the Court can obtain those records. Mr. Dike is the secretary of the company; Mr. Dike is at the present time in New York.

**Testimony of Harry K. Brown (Resumed).**

I have seen the written option. I was with the Scheiber brothers when they signed it. The written option was given and signed by the Scheiber Brothers in my presence for 600 acres of land at \$125 an acre. I do not think it said anything about the levee. I could not say the technical terms of it, but the substance of it was that we were to have the privilege of selling that land. The option read 600 acres at \$125 an acre, and we were to have 5 per cent commission for sale of same. It was taken in the name of the California Colonization Company; it was typewritten; it was written in the office of the California Colonization Company. I think Mr. Dike wrote it, or one of his stenographers. I could not say positively which one. I saw it [87] before they signed it. It gave the exclusive right to sell at \$125 an acre for 600 acres of land with 5 per cent commission to them for their obtaining the purchaser. It constituted the California Colonization Company, their agent, to sell that land at a given price, and represented that the place consisted of 600 acres. It was executed on the 5th day of July, 1911, for the period of 30 days with the privilege of extension. In September, 1911, while at Berkeley, I received a telephone communication from Mr. Dike, the secretary of the California Colonization Company in Sacramento, with reference to the land. He telephoned to me from Sacramento on the evening of the 20th of September—Wednesday, September

(Testimony of Harry K. Brown.)

the 20th. Mr. Dike was the secy. of the California Colonization Company. He wanted me to come to Sacramento; he said he had a purchaser for the Scheiber ranch and he wanted me to give them the details. It was Wednesday evening, September the 20th, while I was at dinner, probably about the hour of 6:30 P. M. Mr. Dike wanted me to come to Sacramento; he said he had a prospective purchaser for the Scheiber ranch, and he wanted me to be sure to meet them and go into the details of the said place. I am positive it was on Wednesday night, September the 20th, that I received the telephone communication. The next morning at my office with the firm of Baker & Hamilton, I wrote this letter and my stenographer wrote them a letter from this copy. On the following Saturday afternoon I went to Sacramento in response to their summons. I remember the date, it was the 23d. I had told them I could not come until Saturday afternoon, at which time I would be through with my work. I left on the 12:30 train and met them at Dixon. Miss Garwood and Doctor Ramos I had never met before; I met them at Dixon. They had a machine, and we then went to Timm's Dairy, and then on to Sacramento. [88] That night after dinner we met—at the meeting after dinner there were present, Mr. Dike, Mr. Crane, Doctor Ramos and Miss Garwood and myself; five of us. We talked about what could be done with this land. We represented to Miss Garwood that this land was particularly adapted to alfalfa and dairy business and that there were 600 acres of it.

(Testimony of Harry K. Brown.)

Mr. Dike made these representations, my best recollection is. He said that the land consisted of 600 acres of the very finest alfalfa land. It was stated to Miss Garwood by all three parties at that meeting that she could not obtain anything better in alfalfa, than it was—than those 600 acres. There was nothing said about any of the land not being as good as some of the rest of the land. As far as I remember it was all represented as being uniformly of the finest kind, first class.

Mr. MACOMBER.—Q. In reference to whether it was a sale of the whole, that is acreage, or whether it was a sale in lump, or as it is called a sale in gross, what was said in that respect, Mr. Brown?

A. Well, it was to be sold as a total providing they took the stock.

Q. I am not asking you anything about the stock. I am asking you was it put to her as a sale in gross, or was it a sale at so much per acre?

A. The whole amount at \$125 an acre.

Q. That is what I am getting at. It was put up to her and talked to her as \$125 an acre?

A. Yes, sir. I had been on the property; I had been all over the portion inside the levee, over the place as far as it was shown to me; as far as I knew it. It was shown to me by one of the two men sitting on the left there (pointing), I don't know his name. One of the three brothers—not Morris, one of the other two went with me over the place, and then we all three together on the 4th of July in the afternoon under the shady portion [89] of the

(Testimony of Harry K. Brown.)

house talked it over, part of the time in German and part of the time in English. I don't speak German, but my wife does, and we knew all what was said. They mentioned it as 600 acres of land; the land was at \$125 an acre, and they would pay five per cent commission. Speaking of the quality of the land, they said there was nothing better as a dairy ranch. They took me over the place, they did not show me anything behind the levee. They said there was a little point outside where they obtained their firewood from; what it was I do not know. They did not say anything about the quantity. I understood them to claim that they had 600 acres under cultivation at that time; that is my recollection. I understood, 600 acres.

Cross-examination.

Yes, sir, I was on the Scheiber ranch about the 4th of July, 1911. I have had occasion to recall that conversation since that time, because after we had sold the property to these people they wrote me a letter at once wanting me to take the management of it. I then went back to the place and to arrange for the stock and wanted Scheiber to stay there a little until we could get men on the field to take care of it. I had a suit myself against the California Colonization Company for this commission, where it was reminded first and forcibly. They denied that I had been there, and I showed conclusively that I had been there. The Scheiber Brothers denied in that suit that I had been on the ranch;



(Testimony of Harry K. Brown.)

the suit was in court for two years; it was decided nine months after it started. It started in 1913. It was placed in the hands of an attorney in 1912. The exact year I am not sure of. I was in court something like two days. I have all my letters relative to that conversation. I cannot answer as to when [90] I first or last had occasion to recall that conversation with the Scheiber Brothers on July 4th, 1911. This is one time I have had occasion to recall it. Then when I had my own trial, there—I think that was in 1913—there was \$875 commission due me, and they contended it was paid to Doctor Ramos at that time. In the conversation of July 4th, they told me that there was a place across the levee where they got their firewood. They said nothing about the Feather River being the boundary of the land; I do not recall any positive conversation on that line; I do not recall any conversation about that. As to my business, I have been farming part of the time, and most of the time I have been in the hardware business. I have been brought up on a farm. When we were on the Scheiber place on the 4th of July, 1911—we got there quite early in the morning, probably 9 o'clock, and we were there until late in the afternoon. We were there trying to get a contract to sell the land. They said it was absolutely their price; if you sell it for that all right; it was \$125 an acre. I do not know whether the contract given to the California Colonization used the words \$125 an acre, or \$75,000 for the land. My best recollection is that it said \$125 an acre; it may have

(Testimony of Harry K. Brown.)

said \$75,000, I would not swear to it. I do not know that it contained the figures \$75,000. As to whether is specified 600 acres more or less, I could not swear to it. No, I did not make any division estimating 600 acres at \$75,000 was \$125 an acre. No, I did not. I saw the option when they signed it; the Scheiber Brothers signed it. I was present, yes, sir. I saw it when they finished. Yes, I think I read it; I am pretty positive that I did. I would not swear whether the contract said so much an acre, or \$75,000. I do not recall whether it said 600 acres [91] or 600 acres more or less. It was on the 23d day of September, 1911, that I had the conversation with Doctor Ramos and Miss Garwood. Yes, sir, it was on the 23d—on Saturday, the 23d. Dike was there, going over to Sacramento from Dixon, and then that evening Mr. Crane was there with us, and we were all there together. That evening—Saturday evening. I did a great deal of the talking, yes, sir; not all of it. My name was not mentioned in the contract between the Scheiber Brothers and the California Colonization Company. I was not an officer, or director, or employee of that company; I was only working with them on this particular sale, upon a contract with them, which was made upon the next day, before I returned to San Francisco, or possibly that night.

Q. You mean the 24th of September?

A. I have the letter that I can show you, The contract was made with me after the option, as you term it, or contract was signed. I had a contract with

(Testimony of Harry K. Brown.)

the California Colonization Company, made about the 5th or 6th of July. It was made in duplicate and signed by U. L. Dike, Secretary of the California Colonization Company. The first contract between Dike and the Scheiber Brothers, or between Scheiber Brothers and the California Colonization Company was for 30 days, but it was renewed according to the letter I received. I do not think it was ever renewed in writing. I think the same contract was renewed between Scheiber Brothers and Dike.

#### Redirect Examination.

I brought a suit against the California Colonization Company afterward to obtain my half of the commission according to the contract with them for the sale of this land. [92]

#### **Testimony of A. L. Crane, for Plaintiff (Recalled).**

A. L. CRANE recalled by the plaintiff, testified as follows: I was president of the California Colonization Company; Mr. Dike was the secretary and treasurer. It took two signatures to sign checks. There were three members of the corporation; myself, Mr. U. L. Dike and Mr. Green. There were no other members to the corporation, just us three gentlemen. We three composed the corporation; it was duly incorporated. During the time of this transaction Mr. Green was away in Oregon. I perfectly remember the circumstances of Miss Garwood coming to our place of business. She stated that she was going to bring a man to us, and that she would not look at anything before she had this man with

(Testimony of Harry K. Brown.)

her. She said she would not buy anything without his passing upon it. She afterward brought this gentleman to our office. At the time she introduced him to us she said he was her agent; she said that he would be her advisor, and she also said her relations with him would be much closer, I believe she was to be married to him; she said she was engaged to him; she told me that. The first day we went out with Doctor Ramos we took him to Andros Island to Cutter's Ranch; that was down the Sacramento River. Mr. Bucholz, Dr. Ramos, Miss Garwood and myself made up the party. Dr. Ramos did not think the property I showed to them was large enough. On the way back Mr. Bucholz suggested they look at the Scheiber Brothers' ranch. When we got back from our trip I introduced Dr. Ramos to Mr. Dike, who was familiar with the Scheiber Brothers' ranch. I had no knowledge of it, I had never been upon it. I told them that that ranch was Dike's best scheme, and that he thought more of it than any other property in our territory.

Q. How was that land put up to Miss Garwood, or how was it represented in reference to quantity?  
[93]

Mr. HEWITT.—Objected to on the ground the time, place and parties present are not stated.

Mr. MACOMBER.—Q. At the time she was present and put up the earnest money and signed the contract?

Mr. HEWITT.—Objected to as being two different times.

(Testimony of Harry K. Brown.)

The COURT.—Sustained.

Mr. MACOMBER.—Q. What was explained with reference to the quantity of land?

Mr. HEWITT.—Objected to as being indefinite in time.

The COURT.—Overruled.

A. My understanding was 600 acres.

The COURT.—Q. You were asked to state what was said to Miss Garwood?

A. I did not present this piece of property, Judge.

Q. You must not tell what the understanding was. Read the question, Mr. Reporter.

(The reporter read the question.)

A. Bucholz, the driver, made the first statement.

The COURT.—I will sustain the objection to that. There is no relation shown.

Mr. MACOMBER.—Q. Did Mr. Dike ever in your presence make the statement—what was the agreement or understanding when that land was sold her, was it in gross or acreage?

A. My understanding was it was to be acreage.

Q. How much an acre? A. \$125.

Q. Is that the way it was represented to the plaintiff?

The COURT.—Q. If you know?

A. I could not swear that. I think it was.

Mr. HEWITT.—I move to strike out the witness' understanding.

The COURT.—What he thought it was may be stricken out.

Mr. MACOMBER.—Q. Don't you know, as a mat-



(Testimony of Harry K. Brown.)

ter of fact, Mr. Crane, [94] as to whether or not that land—if the Court please, I do not want to lead the witness as you admonished me not to do so. Mr. Crane is between the devil and the deep sea, so to speak.

The COURT.—That will not prevent him from stating his best recollection of what was said.

Mr. MACOMBER.—Wouldn't it be permitted to lead some?

The COURT.—I do not think you need to lead Mr. Crane. He is intelligent enough. I do not think it is necessary.

Mr. MACOMBER.—Q. What was said to Miss Garwood in reference to what that land produced?

Mr. HEWITT.—That we object to, if the Court please, on the same theory that we made the objections in the other case, as being a matter of opinion, the producing quality.

The COURT.—I will sustain that objection. That calls for a statement made by anyone present, whether it was shown to be an agent, subagent or stranger to the transaction.

Mr. MACOMBER.—Yes.

The COURT.—You will have to confine your testimony to those who were directly connected with this transaction. Some stranger to this transaction may have expressed an opinion as to the acreage or character of the land and certainly it would not be binding upon these defendants. You have got to connect the defendants with these representations in some way.

(Testimony of Harry K. Brown.)

Mr. MACOMBER.—Q. Mr. Crane, you were present, were you not, at the time this matter was discussed between the Doctor, Miss Garwood and yourself and Mr. Dike?

A. Very little of the time.

Q. You know, as a matter of fact, what the land was said to produce? A. Alfalfa.

Q. What was said by yourself and Mr. Dike with reference to the quality of alfalfa land?

A. We considered it first-class [95] alfalfa land.

Q. Was it not put up to Miss Garwood as first-class alfalfa land?

The COURT.—Q. State what was said?

A. I cannot answer that because I was not present during all Mr. Dike's talk.

Q. Don't attempt to say anything when you were not present. Only say what was said in your presence. A. Yes, sir.

Mr. MACOMBER.—Q. You were present, Mr. Crane, during the conversation held with Miss Garwood and Mr. Dike. What was said with reference to the quality; was it first-class alfalfa land, or good, bad or indifferent?

Mr. HEWITT.—We object to the question as being incompetent, irrelevant and immaterial, suggestive and leading and as calling for matters of opinion.

The COURT.—I will overrule the objection. I will admit the testimony subject to counsel's objection.

(Testimony of Harry K. Brown.)

Mr. MACOMBER.—Q. What was said?

Mr. MILLER.—Suppose we have the question read to the witness.

(The reporter reads the question.)

A. It was represented as being first-class alfalfa land by Mr. Dike.

Mr. MACOMBER.—Q. You know that of your own knowledge? A. Yes, sir.

Q. Mr. Crane, at what price per acre was that land put up? A. At \$125 an acre.

Q. As to the money which you had to pay to Dr. Ramos, was there any money given to Dr. Ramos?

A. By us, by the Colonization Company?

Q. Yes? A. Yes, sir, \$1500. [96]

Q. At what time was that paid?

A. After he made the first payment. He came out from the office where he was talking with Miss Garwood and told me they had decided to take the ranch provided we would split the commission; otherwise they would not take it. So we held a meeting of the organization and voted to give him one-half.

The COURT.—Q. Did I understand you to say Miss Garwood was present?

A. He was with her and left her.

Mr. MACOMBER.—Q. When he handed you this check for \$5,000 you handed him back a check for \$1500?

A. Not immediately. He came before that and we told him that we had to hold a meeting because it was a corporation.

(Testimony of Harry K. Brown.)

Q. When he gave you the \$5,000 you gave him \$1500 afterwards?

A. We returned him a check for \$1500.

Q. And Miss Garwood was in the other room?

A. He came from her.

Cross-examination.

We gave him a Colonization check in return. He came right from Miss Garwood and said that they had decided to take the place, provided we split the commission. Yes, sir, he said "we." Previous to that time Miss Garwood had asked us to split the commission several times. At the time we agreed Miss Garwood was present in the other office and Dr. Ramos came from her and said we are willing to take the place, provided you split the commission and we agreed to do it. I did not see the written contract between the Scheiber Brothers and the Colonization Company. I do not know the contents of that. Mr. Dike held all the contracts in the listing book. I got my idea of the 600 acres from the conversation we had in the office; it was always [97] spoken of as 600 acres; it was supposed to contain about that number of acres. Prior to the time we actually agreed to split the commission with Dr. Ramos, I was informed by a third party that they would make that demand. The party was C. E. Winerich. He said they had talked it over in his hearing and they were going to demand a division of the commission. In splitting the commisson, it was not our idea that we were cutting down the price to that extent, or in that amount. It is not cutting

(Testimony of Harry K. Brown.)

down the price. We were allowing it to the plaintiff. There was nothing at all said in any conversation that we had, as to the price in case there were more than 600 acres. The property was generally referred to as 600 acres.

Redirect Examination.

Mr. MACOMBER.—Q. Mr. Crane, the check that you gave Dr. Ramos the time he handed you the \$5,000, as you heretofore testified, that was made out to Dr. Ramos? A. Yes, sir, Dr. Ramos.

Q. And the check he gave you was made out by Miss Garwood?

A. Miss Garwood's check. We talked with Miss Garwood at the office of the California Colonization Company. She came in frequently. I did not converse with her very often; she talked with Mr. Dike about this property. We could not pay a check without it being a matter of record, it was a corporation. There was a resolution passed allowing this to be paid, half of the net commission. The gross commission was \$3600.

Recross-examination.

Miss Garwood negotiated about a month before Mr. Brown came up to Sacramento. Mr. Brown was not called in until the deal was practically closed. She was there about a month before Mr. Brown came. Miss Garwood was at the ranch twice, I [98] know, before the contract was made. That is, the machine went three times, but I think Miss Garwood went twice. Ramos went three times.



(Testimony of Harry K. Brown.)

A. L. CRANE, recalled for redirect examination. I never saw the contract with the Scheiber Brothers; it was on the listing book only. Mr. Dike went up and secured authority after we had found the purchaser. After we had secured Miss Garwood, he went up and got authority from the Scheiber Brothers. I do not know in what manner that authority was obtained; I know he did get authority. They consummated the sale. I could not answer what was done with the balance of that \$5,000, there being \$3500 left. The money was turned over to the corporation funds. The California Colonization Company sold the dairy farm owned by the three Scheiber Brothers in Sutter County. They received from the Scheiber Brothers \$3600 for the sale. That money was paid when the money was paid for the ranch. I do not remember how long a time it was after we received the \$5000 check; I was not the secretary. Yes, sir, there was some balance left from the \$5,000 after taking away the \$3600. I don't know to whom that was turned over. I think they paid us our commission afterwards. As I recollect the Scheiber Brothers gave us a check for \$3600. I do not know when they gave us the check; I never handled the money. They gave us \$3600 for selling that land. I cannot tell you anything about the funds.

**Testimony of Clinton L. White, for Plaintiff.**

CLINTON L. WHITE, called for the plaintiff testified: I never saw the books, papers or records of the California Colonization Company. I never

(Testimony of Clinton L. White.)

had them and don't know anything about them. Mr. Needham, one of the partners of our firm tried [99] the case brought by Mr. Brown against the California Colonization Company, and I never saw any papers or pleadings, and never was in court about it. The firm of White, Miller, Needham & Harber were the attorneys in that action. I never saw the papers and do not know that they ever handled them. I do not know anything about them. I do not know whether they ever had any papers. I might assist the Court in finding that record, I do not know. I suggest that Mr. Crane or Mr. Dike could give you some information.

**Testimony of A. L. Crane, for Plaintiff (Recalled).**

A. L. CRANE, recalled, testified as follows in redirect examination.

I did not handle this deal. It was my impression that the land was first class alfalfa land. Mr. Dike handled the deal entirely. Mr. Bucholz put it up to Dr. Ramos, and they discussed it in the machine coming back from the river. I did not say anything about it, for I was never on it.

Mr. MACOMBER.—Q. What was stated by Mr. Bucholz in reference to that land? What did he say?

The COURT.—Now, as I understand it, he was not the agent of the vendor.

Mr. MACOMBER.—We will show, if the Court please, that this agent received a percentage of this sale, this automobile driver, this Mr. Bucholz at this

(Testimony of A. L. Crane.)

time received a certain percentage of the \$3750 which was paid to Mr. Dike and Mr. Crane.

The COURT.—Do you affirm that you will show that he was directly or indirectly the agent of the vendors?

Mr. MACOMBER.—We will show that he would be what you would term probably indirectly the agent; that is, he was a subagent. We have authorities holding that representations made by subagents are binding upon their principal, just the same as if made by [100] the agent in chief.

The COURT.—I will admit the testimony with the understanding that you are to show in some way that this party was connected with the vendor. If not, it will not be considered for any purpose whatever.

Mr. Bucholz said he thought it was a fine proposition. My recollection is that he knew of a very fine dairy ranch. He said it was fine alfalfa land. He said it was his personal opinion. I could not give the exact words that he used, in reference to that land. He said, according to my best recollection, he knew of a very fine proposition up the river—a dairy ranch—and the doctor said he would like to look at it.

Q. Did he describe it further? What did he say?

A. I think he did go into it; as far as that is concerned, I do not know; I could not hear with the machine running along all the conversation that was carried on.

The COURT.—For the purpose of refreshing your recollection, I will permit counsel to ask a leading question.

(Testimony of A. L. Crane.)

Mr. MACOMBER.—Q. Was there not something said by you about a pet scheme of Mr. Dike's?

A. Yes, sir, I did.

Q. What did you say?

A. I said that was Mr. Dike's pet scheme. He said it was a very fine proposition.

Q. What else did Mr. Bucholz say with reference to the character of that land?

The COURT.—Q. If anything.

Mr. MACOMBER.—Q. Did he say he had seen it?

A. Yes, sir, he did.

Q. Did he say that he understood it, that he knew all about it?

A. My recollection is that he said it was a very fine property.

Q. What did he say about in what class the alfalfa land belonged, [101] as to whether it was good, bad or indifferent?

A. First-class.

Q. Did he say it was first-class alfalfa land, or did he say "I think it is first-class alfalfa land"?

A. That I do not recollect.

The COURT.—Q. Did he say how many acres there were?

A. Yes, sir, about 600.

Mr. MACOMBER.—Q. You cannot say positively now at this time whether he gave that as his information, his guess, his personal, individual opinion, or whether he gave the statement as being a fact?

A. No, sir, I could not.

Now, as to the \$5,000 check, it was given to Mr.

(Testimony of A. L. Crane.)

Dike, made out, as I remember it, to the firm, and Mr. Dike gave Miss Garwood an agreement to deliver the property, subject to the owners' approval. that is my recollection of it. Thereafter we gave Dr. Ramos a check for \$1500. If not immediately afterward, I should think it was pretty shortly after. I may have stated the other day that when he handed me the check for \$5,000 I handed him back a check for \$1500. I may have made a statement to that effect, but to the exact time, this is four years ago, and it is difficult to remember four years exactly, but we gave him a check afterwards, if not immediately. My recollection was that we gave Dr. Ramos a card stating that I would divide the commission with him. I think we did. I gave Dr. Ramos that card when he came from the little office where he had been conferring with Miss Garwood, and told me they would not take the property unless I divided the commission. So we held a little meeting, Mr. Dike and myself; Mr. Green was absent. We passed a resolution authorizing a division of the net commission, and then he asked for a verification, and we wrote it out on a card, [102] as I remember it. We never tried to conceal the division in commission.

Q. Did you ever tell Miss Garwood anything about it?     A. No, sir.

Q. You knew you were selling the property to Miss Garwood?

A. He was her agent. Ramos never said anything to me about working for his health. Dr. Ramos did not say to me that he would have to have some money



(Testimony of A. L. Crane.)

out of the transaction. At the time I gave him this *car*, I agreed to give him one-half of the net commission. Yes, sir. I would not state just how long it was after he gave us this check for \$5,000 drawn by the plaintiff that we gave him the \$1500 check. No, we did not hold the meeting and then give it to him. This meeting, as I remember it, this demand that he made was several days prior to the payment of that money. As far as the actual payment of the commission is concerned, I could not give you an exact answer as to how soon the money was paid to us. The money was paid to us, made out to the Colonization Company, as I remember it, and then we made it out as agents for the Scheibers, and then we made out a check for Dr. Ramos as agent for Miss Garwood. Now, the exact time between the transactions, I could not give you, but it was very shortly after.

Q. Before the money was paid, he made the demand? He made the demand before the money was paid?

A. Several days before. My impression was that Miss Garwood knew all about it.

Q. That is all right about that part of it. He made the demand for the division, and the demand was acquiesced in by you some days previous?  
[103]

A. Some days previous, because that was when they had agreed to take the property.

Q. As a matter of fact, the agreement for a division of the commission was made some days prior to

(Testimony of A. L. Crane.)

the date this \$5,000 was paid?

A. I think it was. There was an interval of several weeks from the first time they saw the property. I have not the days fixed firm in my mind as to when we went to the Sutter Ranch. I have not the day fixed in my mind as to when the \$5,000 was paid. It is my recollection that the agreement to divide the commission was made several days before the \$5,000 was paid. I do not remember how much commission was paid to Mr. Bucholz. Mr. Dike handled all the commissions.

Q. But there was some commission paid to Mr. Bucholz? A. I think there was.

Q. Don't you know there was?

A. No, sir, I do not.

Q. Didn't you state to me the other evening there was some commission paid?

A. There was a listing commission. Might I explain that, your Honor?

The COURT.—Yes.

A. A listing commission goes to the man who submits the property in a real estate office. There was a listing commission due Mr. Bucholz for submitting this property, and my impression is that it was paid.

Mr. MACOMBER.—Q. That is, that was your practice?

A. Yes, sir, that was the practice.

Q. And you did pay a commission to Mr. Bucholz?

A. Yes.

(Testimony of A. L. Crane.)

Cross-examination.

Mr. MILLER.—Q. Did Mr. Bucholz list this property with you? [104]

A. Inasmuch as this property—

The COURT.—Q. (Intg.) Answer the question. Did he list it with you?

A. He brought it up to the purchaser, and it was not in force, so we look upon it as a dead piece of property upon our books.

Mr. MILLER.—Q. Are you sure of that?

A. I am quite positive.

The COURT.—Q. I do not quite understand your answer.

A. Might I explain it, your Honor?

The COURT.—Yes.

A. As I recollect it, this contract had run out, was not in force.

Q. Which contract?

A. The original contract with the Scheibers, between the Colonization Company and the Scheibers. It was a dead property upon our books, and Mr. Bucholz brought it up and submitted it to Miss Garwood and Dr. Ramos.

Mr. MILLER.—Q. What do you mean, brought it up?

A. He was the one that suggested it to them.

Q. While they were in the automobile?

A. Yes, sir, so that afterwards they had to make a new agreement with the Scheibers, and for that reason he claimed some share in the commission. It is merely a technical term.

(Testimony of A. L. Crane.)

Q. You stated, in answer to counsel, that this was a pet scheme of Mr. Dike's?     A. Yes, sir, it was.

Q. As a matter of fact, Mr. Dike and Mr. Brown were trying to buy it for themselves?

A. Yes, sir, they were.

Q. Forming a corporation to purchase it for \$90,000.

Mr. MACOMBER.—Objected to as not cross-examination as to what they intended to do.

The COURT.—I sustain the objection.

Mr. MILLER.—Q. Do you know anything about this new contract [105] with the Scheiber Brothers. Did you have anything to do with the preparing of that contract, itself?

A. Nothing whatever.

Q. And you do not know its contents?

A. No, sir.

Q. You seem to confuse the payment of the \$5000 with the payment of the commission, I think. At the time that Dr. Ramrs came to you from Miss Garwood, and said that they would take the place if you would divide the commission with him, was it not that same day that the \$5000 was deposited with you?

A. I think not.

Q. And subsequently was not that check taken up and another one given, and deposited in the Fort Sutter National Bank?     A. I believe it was.

Q. Is it not a fact that you did not pay Dr. Ramos anything until several weeks later, when you actually received your own commission?

(Testimony of A. L. Crane.)

A. We received our own commission before it was paid.

Q. Then the \$5,000 check was deposited by you some time before you actually paid him the money?

A. Yes, sir.

Q. And you say there was some sort of a receipt or document given to Miss Garwood when she paid the \$5,000.

A. Yes, sir, there was a receipt, an agreement to deliver this property subject to the owner's approval.

Q. Did you ever see that document?

A. No, sir, Dike made it out.

Q. You do not know it then?

A. No, sir, I do not know it.

Q. What were the positions of the different parties in the automobile in that ride to Andros Island and back?

A. Dr. Ramos and Mr. Bucholz sat on the front seat, and I sat on the rear seat with Miss Garwood, that is, returning.

Q. At the time of this conversation?

A. Yes, sir.

Q. Do you know whether or not, as a fact, Mr. Bucholz did receive [106] any commission?

A. No, sir, I could not tell you. I did not handle the money.

Q. You know that he claimed some?

A. He claimed a commission.

#### Redirect Examination.

When he acted as a selling agent it was the practice of the Company to pay the chauffeur a commis-



(Testimony of A. L. Crane.)

sion on the properties that he would help to sell. All salesmen get a commission. I do not know if we did pay commissions to Mr. Bucholz. Mr. Dike handled all the commissions. There was some arrangement allowed him of a certain percentage on the sales he handled.

Recross-examination.

As far as I know, all that he did was to mention it in the automobile on that occasion. I do not remember of him saying anything at any other time.

**Testimony of Arthur E. Miller, for Plaintiff.**

ARTHUR E. MILLER, called by the plaintiff, testified as follows:

Our firm were the attorneys of record for the California Colonization Company in the action brought by Harry K. Brown against the California Colonization Company. We were the attorneys for that concern in that case. We represented them in their matters at times, not I personally, but Mr. Needham of the firm. We did not have anything to do with the books of the California Colonization Company,—not that I know of. I know that in that case certain documents and letters, etc., relating to the Scheiber Ranch were submitted to Mr. Needham and were offered as exhibits, and I have obtained those exhibits since I went back to Sacramento last Saturday. I have obtained [107] those exhibits. I knew nothing of them before, but I have them now. I have not the minute book, or the other books. I have not the slightest idea where they could be obtained. They were not among any of the California

(Testimony of Arthur E. Miller.)

Colonization Company papers in our office. I looked through all of them and found none of the minutes, except the exhibits which I have brought with me. I have the original authorization given by the Scheiber Brothers; the one they signed, authorizing the California Colonization Company to secure a purchaser. It is in the nature of an option with the right to sell and earn a commission. I do not know where you could obtain the other books and papers; I have no idea. They were never in the office that I know of.

**Testimony of Albert J. Peter, for Plaintiff  
(Recalled).**

ALBERT J. PETER, recalled by the plaintiff, testified as follows:

My name is A. J. Peter. I have lived in the town of Nicolaus and vicinity for 31 years. I am somewhat familiar with the soil in the vicinity of Nicolaus. I am familiar with the land that is subirrigated; that is, the land wherein the water seeps into it from the diver under the levee. I have had experience with land in that vicinity. I have farmed there. I have never farmed the Garwood ranch. I am familiar with the property belonging to B. F. Driver. That is one-half mile from the Garwood land; it is not closer than half a mile. The Saylor ranch lies directly east of the Driver place. Directly east of the Saylor ranch there is the Garwood land. I think it depends a whole lot on the soil as to how far the subirrigation extends from the river. If the soil is uniform it runs parallel with the river. When you go through the Fassler and Joseph Meise place, [108] the subirri-

(Testimony of Albert J. Peter.)

gation extends between one-half and three-fourths of a mile. The line of subirrigation, when you get down to the Redfield ranch, extends about the same distance from the river, or a little further. I am familiar with the elevation lines of the land there. I do not know whether the subirrigated land runs along the line of 32-foot contour. I do not know how the line of subirrigation ran, when compared with the 32-foot contour line. I guess that the subirrigation goes over the biggest part of the Saylor ranch; it hardly goes as far as the eastern end of the Saylor ranch. On the east side of the Borgman ranch there is a slough. I think the subirrigation goes clear out to that slough. I think the biggest part of the Borgman place is subirrigated. I am not sure; I never farmed any of it. The subirrigation extends, I judge about one-half or three-fourths of a mile. It all depends upon the soil. Some of the soil is heavier than others, and does not let the water come through. If the soil is of a clay nature, it does not let the water rise to the surface. The Driver place was formerly owned by our family. That place was entirely subirrigated. Speaking in reference to the Redfield farm, lying just north of the Garwood place, and speaking of the Saylor farm, lying just south, the subirrigation when between one-half and three-fourths of a mile from the river,—probably a little further. I should judge that it took pretty close to all the Saylor place, except a little piece on the east end. I do not think that the portion of the Garwood ranch, which is the northeast quarter of Section 24,

(Testimony of Albert J. Peter.)

is subirrigated. I have seen this land at the rear end of the Garwood place overflowed. I have seen it overflowed a week at a time. I have seen it overflowed longer than that, before the reclamation. Before reclamation I have seen the water over it [109] for a month at a time, I guess. This reclamation was done within the last two or three years, and since that time this land does not overflow. The reclamation reclaimed the back land of this particular piece of property. That is, it kept water from backing up or coming down on top. The back end of this particular property is now free from water.

Cross-examination.

The Borgman ranch is located southwest of the Garwood property. It is farther from the river than some of the Scheiber property. It is farther away from the river than the portion of the Garwood place which is right along the river. The Borgman property does not join the northeast quarter of Section 24, of the Garwood land. The Borgman property is west of that quarter section; it does not adjoin. The Redfield farm is north from the Borgman property; it adjoins the Garwood and Scheiber property. The Saylor ranch lies right south of the Garwood place. The eastern line of the Saylor ranch does not extend as far easterly as the east line of the Garwood property—by about one-half mile. I said all of the Saylor ranch but one corner was subirrigated. I do not know how many acres there are to the Saylor ranch. The land in the rear sometimes overflows a month at a time. It was in the winter-time, the time of high



(Testimony of Albert J. Peter.)

water. Yes, I have known it to overflow without any levee break; the back-water of the Sacramento River. The back-water of the Sacramento River has extended over that land from three to four weeks at a time, I guess it has. The biggest part of the section would be covered—the northeast quarter, yes, sir. Some of the Borgman property overflowed at the same time. Some parts of the Borgman property would be overflowed about the same length of time. Some parts of the Saylor property would be overflowed at the same length [110] of time. I could not say how many times I have ever known the land to be overflowed a month at a time. I have known it to be overflowed for a month at a time more than twice. It was overflowed in 1907 and 1909. Those are the only two years I have known it to be overflowed more than a month. I cannot recall exactly. Those years 1907 and 1909 were extremely high water, all through the Sacramento Valley, and I guess a large portion of the Valley was submerged at that time. The reclamation districts were formed within the last two or three years. I do not know when the district was formed. The work was done in the last two or three years. The plan of reclamation along the river consisted simply of raising the levees. At some places the subirrigation extends further than others, it all depends upon the soil. When I said subirrigation extends from one-half to three-fourths of a mile from the river I had in mind the distance at a right angle from the river. It may exceed that a little in some places. At the Garwood



(Testimony of Albert J. Peter.)

place, I figure the distance to go from the levee. When I say one-half to three-fourths of a mile on the Garwood place, I mean from the old levee.

**Testimony of I. N. Scammell, for Plaintiff.**

I, N. SCAMMELL, called for the plaintiff, testified as follows:

I reside in Walnut Creek. During the latter part of 1911 and 1912 I had charge of Miss Garwood's ranch at Nicolaus. That is the ranch concerning which this controversy is over. I had occasion to observe the character of the soil; I ran a ranch five years prior to this. To a great extent I understand the various classifications of soils and their character. I understand what is meant by subirrigated land. I know what is meant by river-bottom land. I understand what is meant by sandy [111] sediment loam. I understand what is meant by clay loam. I understand the difference between soils when rich and soils that are poor. I have a remembrance of the character of the soil of this particular ranch in 1911. I know the conditions of this particular ranch with reference to subirrigation. I know what the conditions were at the time I was there in respect to overflow at the rear end. At the time I was there, I took notice of what land was subirrigated, and what land was not subirrigated. I had reason to observe it while cutting the hay there. I know positively what land was subirrigated, and what land was not subirrigated. The land that was subirrigated land ran back from the river, approximately to the house. It is not a straight line, toward Striplin Station it ran

(Testimony of I. N. Scammell.)

back a little further. I recognize that map as the map of this particular land. That is the shape of the ranch. I can make a mark here showing where those houses were. (Witness does so.) That mark which I make indicates the location of the ranch house. (Witness draws a line to indicate according to his idea how far the subirrigation goes, and marks "A" at one end of the line and "B" at the other end.) The subirrigation extends from the river to that line. You could raise alfalfa on the subirrigated land, but on the other, there was some of it planted in alfalfa which would raise a good first crop, and not so much in the second crop; it petered out. It did not give your four or five cuttings; as the front of the ranch did toward the river; that part of the ranch was used for pasture, and they told me that it had not been planted in alfalfa. Some of the land just back of the house would raise a first crop. There was approximately a ten-acre field [112] in here that was planted, and a part of it would show the subirrigation, and a part would not. I was speaking in answer to his question about the land across the road; the 160 acres, which had never been planted in alfalfa. I didn't plant any alfalfa when I was there; it was there when I went there. The alfalfa looked fine the first and second cuttings, and on some of it you would get a third cutting. That was the dividing line between the subirrigated and the other land; between the subirrigated and the non-subirrigated. The alfalfa would come up four or five inches and go to seed, and the other on the subirrigated side would

(Testimony of I. N. Scammell.)

grow up to its regular height and make hay. During my time on the place the alfalfa on the non-subirrigated side remained in the ground and came up the next year. I never estimated the number of tons to the acre that particular portion would produce. I can recall how much it would produce, because I know how much the first and second cuttings would produce. The first and second cuttings produced approximately three or three and one-half tons. The first and second cuttings are the heaviest. The first couple of cuttings were the same on the subirrigated and non-subirrigated. The non-subirrigated produced about three and a half tons to the acre. In respect to the overflow of the back end of the land, the year I was there was an extremely dry year, but the water did get along on the back acreage and stayed there, I should say, probably four or five days at one time. I do not remember what month it overflowed, but I know that it did overflow. I saw the riff-raff that the flow carries with it on the fences, which was much higher than the water went the year I was there. When I cleaned out the cheese-house there was filth and mud on the cheese-house floor and on the bottom shelf. I know how many acres there was supposed to be to the ranch. I could only guess how [113] many acres clear and level for pasture. I am familiar with the northeast quarter of section 24. No portion of that was subirrigated. The portion of the land immediately north of the quarter section, possibly 50 acres, is not subirrigated. There might not be as much as 50 acres. The soil at that

(Testimony of I. N. Scammell.)

end of the ranch was very heavy and from the weeds that grew on it, I would judge that it was sour. By the term sour, I mean the land would have moisture on it, but it was very dense land, and it was a kind of clay. That is not the best land for alfalfa. That is the general character of the land below the line which I have drawn indicating the line of demarcation between the subirrigated and non-subirrigated. I did not say that there were 50 or 60 acres out of the 600 that was non-alfalfa land; I said that the 160 acres was of that kind of land, and then there were 50 acres across the road, making approximately 200 acres not susceptible to subirrigation. Yes, I am familiar with the other end of the ranch. I first went on the ranch early in November, about the 9th of November of the year 1911. I was there about nine months, maybe ten months. At the time I was there the new levee had not yet been built. At the time I was there they had not commenced it. The land lying northwest from the old levee was covered with very dense timber. It was subject to overflow, and, in fact, water stood all the year around in places on it. The old levee did not extend across the ranch. The levee is as it is shown there (indicating on the map); I know of the land belonging to plaintiff to the river line. I do not know of any land across the river belonging to this place. I was there about ten months. Alfalfa could not be raised on the land outside of the old levee. The land outside the old levee could [114] be prepared for alfalfa. The land had big holes in it in places. You could walk

(Testimony of I. N. Scammell.)

through there in places in the summer time. You would have to break your way through. You could not go through there in the winter time,—it would be full of water, not all winter, but during the flood times. I took photographs on the ranch while standing near the river, and looking in a northwesterly direction. I have such a photograph with me. It was probably taken in April or May. The water at that time was ordinary. This picture is of the land or landscape lying in a northwesterly direction from where I was standing on the river bank. I was standing on the river bank about three-fourths of the way from the northeasterly boundary line, and looking in a northwesterly direction, right across the river, there was a bend in the river here. I did not know the plaintiff owned any land over in that direction. (This picture is in evidence, marked, "Plaintiff's Exhibit 1.")

#### Cross-examination.

Yes, I was on the Scheiber ranch about ten months; I went there about the 9th of November. The Scheiber Brothers were on the ranch at that time. They remained there and farmed the ranch until the first of December. I was getting my hand then during that time. All my information concerning that ranch was gleaned in the ten months I was there. I was never on the ranch before, and have never been there since. The residents told me the winter I was there was an extremely dry winter. I have no knowledge of that portion of the ranch, which is the northeast quarter of section 24 ever having been planted



(Testimony of I. N. Scammell.)

in alfalfa. It showed no indication of having been planted in alfalfa. Some of the land belonging to the Garwood property over the road adjoining the quarter section showed evidence of having been planted in alfalfa, there was [115] alfalfa growing there at that time. I cut it. It was on that ten-acre flat. It was approximately ten acres. That was the only land on the other side of the road, near this quarter section, that had been planted, as far as I could observe—the ten acres. As to the picture I took, I did not take it from the levee. I took it right from the bank of the river. There was only one channel there when I was there. I crossed the river at times. I do not know anything about an artificial channel. All I know is, I stood on the bank of the river and took the picture. I stood on the ranch side of the river. I did not stand on the levee, I was clear down to the river. There was an old levee there; there was a bar right in and I walked down this levee here and walked off on to that portion and stood on the bank of the river. I walked over the old levee and down to the other side of the levee, and walked over to the water and took the picture. I could walk over the levee there, but it would take a long time. Water would not prevent me from getting through it. When I took the picture the camera was pointing down the river and across. The river had a bend there and went around this piece of land which shows. I took pictures of the ranch to send home. I did not know anything about any litigation. The land in the picture represented

(Testimony of I. N. Scammell.)

land across the river. There was a sand-bar where we went swimming. I did not identify it as belonging to anybody. I did not know whose land it was. From what I have since learned here I have learned whose land it was. From what I have learned here I understand it to be some of the land of Miss Garwood. The tract of the land on the other side of the river has trees. I have been over it at the time I was up there. [116]

Recross-examination.

I ran a dairy ranch for Mr. Berges in Contra Costa County for five years. I was with him six years prior to that on the same ranch in Contra Costa County. It was high land, quite high. There were hills in connection with the ranch, but there was a big flat. It was alfalfa land. Speaking of the drift on the fences there, I am speaking of the back fence on the back of that 160 acres. I do not think there had been any floods, or high water from the first of November, or first of September, up to the time I went there. At the time I went there, there had been no rain recently. There were not any floods at that time. I am 28 years old. Yes, there was mud on the floor of the cheese-house in among the shelves. They told me that it was deposited there in flood time when the levees broke. Just from looking at it, one would judge so. Probably the levee broke somewhere in the district, and flooded the cheese factory. I guess that was an unusual year, and levees broke. That was my first experience in a levee country. They surveyed and were building the levee when I

(Testimony of I. N. Scammell.)

was there. I saw stakes; they may have surveyed it before I was there. I saw stakes down the river. There was a gang around there after I was there. When I took the picture the camera was pointed towards the bend; it was pointed across at this sand-bar; it was a little down and more across. This white streak here represents water. That which seems to be a little brush, is the reflection of the trees in the water. The sand in front here is sand in front of the trees. Here is the sand-bar that ran to the bend here, and here is the bend. The river went clear back around here again. These trees were on the same bank I was on. I was on the river right back of the levee, and I shot across that sand-bar. My camera [117] was pointed on the water line; I stood on the water line and pointed across the river. My object was to take a picture of the swimming-pool; that is all I had in mind at the time I took it. I cut two crops of alfalfa from some of that land that produced three or three and one-half tons to the acre. That was part of the piece I said contained about ten acres, and was directly across the road from the 160-acre piece. On the other part of the ranch I think we cut four crops that year. I cut the alfalfa until I saw it would not make another crop, and then we used it for pasture and turned the cows on it. We turned the cows on it after we let it grow up a ways. The cows did not run on the alfalfa land generally all the time. The platform of which I spoke, was in the grove.

(Testimony of I. N. Scammell.)

**Redirect Examination**

I could not say just what the condition of that particular place was during the month of April. The water would come up and go down according to how the rains were. The water would not be there during the greater portion of the year, but in places there would be water all the year, in those depressions. The land would be entirely submerged, and during a flood, and that is liable to come any time during a period of two or three months. It would not be entirely submerged for three or four months, but just during the flood period. During the months of July and August, the water would be only that that was standing in the holes,—there were three or four holes there. Some of the holes would be as large as this room, and some three or four times as big.

**Recross-examination.**

Yes, these holes are the places where I said the water was standing all the year around. They may have been barrow [118] pits where they took the dirt for the levee,—that was probably what it was.

**Testimony of Harry K. Brown, for Plaintiff  
(Recalled).**

HARRY K. BROWN, recalled for the plaintiff, testified as follows:

Mr. MACOMBER.—Q. Mr. Brown, the last time you were here, you were examined as to your capacity as a subagent for the sale of this particular land. There were certain letters, according to your state-

(Testimony of Harry K. Brown.)

ments, authorizing you to act as subagent. Did you find those letters?

A. I did not. I looked through my papers at home since then, and have been unable to find them, and I think they must be in the hands of some of the attorneys. There have been so many cases, and I think my attorneys in Sacramento have those things. There have been so many cases on this thing.

Q. You do not know where they are? You cannot state? A. I am not positive where they are.

Q. What was said in regard to these lands?

A. We took up the matter of this Scheiber ranch.

Q. Who took it up?

A. Mr. Crane, Mr. Dike, and myself, representing those people, and the Colonization Company, and I was with them, called there by them to see these people, and Miss Garwood and Dr. Ramos were present. We showed up the land and talked of its acreage—

The COURT.—Q. (Intg.) State what was said. Tell us what you said.

A. We had 600 acres there, known as the Scheiber ranch, and that it would produce—do you want the figures on this?

Q. If you know, yes.

A. The sum and substance of the whole figures were based on the facts as given to me at the time I secured the option.

Mr. MACOMBER.—Q. (Intg.) We do not want that, Mr. Brown; we [119] want to know what was said in reference to this land, as to whether or not it was your personal conclusions, or whether or



(Testimony of Harry K. Brown.)

not it was a statement of fact. What did you say to Miss Garwood?

A. It was a statement of fact, but I want it understood as far as I am concerned here, that those facts were given me by Scheiber Brothers when I visited their ranch.

Mr. MILLER.—We move to strike that out as being the conclusion of the witness.

The COURT.—The objection is overruled, and the motion denied.

Mr. MILLER.—Exception.

Mr. MACOMBER.—Q. What did you say to Miss Garwood?

A. We had this land for sale, and we considered it a very fine purchase.

Q. What did you say with reference to the character of the land?

A. That it was as fine a piece of land as could be had in California.

Q. For what purpose?

A. For dairy purposes.

Q. For raising any particular crop?

A. Alfalfa.

Q. Did you state that as a fact, or did you state it as your opinion? Was it your personal opinion, or was it as a fact that you had knowledge of?

Mr. HEWITT.—We object to the question, if the Court please, on the ground it is incompetent, irrelevant, immaterial and simply calling for the opinion of the witness.

The COURT.—I suppose you may ask the witness

(Testimony of Harry K. Brown.)

to state what he said, what was said by him and by others; as to whether it was a statement of conclusion on his part, or a statement of fact, will be for the Court to determine.

Mr. MACOMBER.—Very well.

Q. Mr. Brown, you may go ahead with your answer.

A. It is a matter of conversation of two or three hours there, all told. It would be very difficult to go into the details of all those conversations, but the substance of it [120] was as to the quality of the land, and the amount of the land, and what it would do, and particularly with the additional cows put on that land. Now, I think that should be mentioned here.

Q. We do not care anything about the cows on the land. I am simply getting at how this matter was stated to the plaintiff.

The COURT.—He has attempted to state that. As he understands, he endeavored to convey to the plaintiff the idea that if certain things were done, that the ranch would produce so much.

The WITNESS.—That is the idea, Judge.

The COURT.—Q. And be so valuable.

A. If they would care—if they would agree to put on the additional cows.

Mr. MACOMBER.—Q. We do not care anything about the cows. We are getting at this quality of land. What else was said by you or by Mr. Dike, with respect to subirrigation, or overflow, or producing quality of the land?

(Testimony of Harry K. Brown.)

A. We stated that it would produce anywhere from 6 to 8 tons of alfalfa to the acre, and there was about 300 acres then in alfalfa, and that we believed it to be the finest piece of dairy land to be had in the State.

Q. Did you say it was the finest piece of alfalfa land in the State?

Mr. MILLER.—We object to the question, if the Court please, as leading.

The COURT.—The objection is sustained.

Mr. MACOMBER.—Q. Go ahead.

A. We went on those lines, showing them the value of the land as it had been represented to us, I do not know of anything further. Those are the substances of the whole thing. The figures show, if stocked properly, on the basis of 250 cows, I am positive was the number, if it was stocked to that amount. [121]

Q. We do not care anything about the number of cows. What we are getting at is the land. Did Miss Garwood, at the time, know anything about it? Was she an experienced person with reference to the land?

Mr. MILLER.—We object to the question on the ground it is incompetent, irrelevant and immaterial, and calling for the conclusion of the witness.

The COURT.—State what the plaintiff said.

Mr. MACOMBER.—Q. What did the plaintiff state about the land? A. She had no experience.

Q. Did she state that she had any experience?

Mr. MILLER.—Objected to as being the conclusion of the witness.

(Testimony of Harry K. Brown.)

The COURT.—The objection is sustained.

Mr. MACOMBER.—Q. You told her this land would produce a certain number of crops of alfalfa?

Mr. MILLER.—Objected to as leading.

The COURT.—The objection is sustained.

Mr. MACOMBER.—Q. What did you say about the number of crops?

A. We told her it would produce five or six crops a season.

Q. How many tons to the season?      A. 6 to 8.

Q. You mean to each cutting?

A. No, sir, that is for the yearly production.

Q. Was there anything said as to any lack of uniformity in the character or quality of the land? It was represented as being uniform in quality?

Mr. MILLER.—Objected to as calling for the conclusion of the witness.

The COURT.—The objection is sustained.

Mr. MACOMBER.—Q. Was there anything said at all in reference to any of the land not being of the same producing quality? [122]

A. Only in this respect, that part of it was not in alfalfa, so in that respect part of it would not be in the same producing quality.

Q. Did you or not say that would not be able to produce as much as the other? Was anything said about the balance not being in alfalfa?

A. I think not.

Q. Was it represented as being all alfalfa land?

A. It was represented as subirrigated land.

(Testimony of Harry K. Brown.)

Cross-examination.

Yes, sir, we stated to Miss Garwood on that occasion, what in our opinion she could do if she put on certain additional stock on the property, and farmed it in a certain way. Yes, sir, we said if she put in 250 cows and handled it in a certain way, and I was put in charge, we could produce a certain amount. Only as I had seen it previous, did I know anything about river land in that section. I know something of river land in other sections of the country. I had previous to that made an arrangement on the Wright and Terry ranch, south of Sacramento. East of Sacramento about four miles. The only experience I have had with that land was in arranging to sell it. Yes, sir, I had gone over that land and knew whether it was subirrigated. I could tell by the growth. Yes, sir, I went on the Scheiber property. Twice only prior to the 23d day of September, 1911. I spent most of the first day there and went over it with one of the Scheibers. In making our representations, as they were made to Miss Garwood, we told her the land was subirrigated. Backed up by this, as given to me by these people, that it was subirrigated land, not necessary to irrigate. I could not say positively whether we told her that it was subirrigated, or that Scheiber brothers said [123] that it was subirrigated. We did not specify any part as subirrigated. We stated there were 300 acres already in alfalfa, about 300. I would not say that it was just 300 we told her that it was good alfalfa. I saw some good alfalfa there.



(Testimony of Harry K. Brown.)

Q. Did you tell her you thought the rest would produce good alfalfa or about the rest of it?

A. I do not recall as to whether or not that was taken up specifically or not. I had been on the place twice previous to that time, including that time to get the option. I did not have sufficient money to buy such a place as that. I did represent to some persons that the land, in my opinion, was worth \$150 an acre. No, sir, I was not there on the 7th day of July, 1911. No, sir, I was not there on the 5th day of July, 1911. I was there on the 4th day of July, 1911. I could not give the exact date of my first visit. It may have been several months before. I did not examine the property during the first visit, I just drove in there and was there a short time, and drove away. Yes, I was there once subsequent to the 4th day of July, 1911. As near as I know, it was Sunday, October the 8th. I think that is correct. It was on a Sunday, after the 3d of October. That was after Miss Garwood had decided to purchase the place, and put up a deposit.

**Testimony of Wm. H. Saylor, for Plaintiff.**

WM. H. SAYLOR, a witness called by the plaintiff, testified as follows:

My name is Wm. H. Saylor. I reside in San Francisco. I am in the publishing business. I publish the Pacific Dairy Review. I own land in Sutter County, close to the land owned by Miss Garwood,—the land in this case. My land lies directly south [124] of some of her's, and directly west of some of her's. My land lies partly west of the Garwood

(Testimony of Wm. H. Saylor.)

land. Taking in view of that piece that lies to the east, that would make my land on the south and west. My land runs in the middle of her land from the west. My land lies on the western south. West of some, and south of another portion. I am somewhat familiar with the terms, subirrigation. The term, subirrigation, is not a definite term, it has considerable elasticity to it. I am somewhat acquainted with the Garwood land; that is, the land which is now the Garwood land.

Q. And you are more or less familiar, are you not, with the portion and extent of that land, and the direction of that land from the river in which the subirrigation part lies? What I mean is, assuming that the subirrigation is a strip of land, the subirrigated land is a strip of land running parallel with the river, you are more or less familiar with the distance from the river to the subirrigated land?

A. As far as relates to my holding there.

Q. How far on your land, your land lying west of the Garwood land, how far does the subirrigated portion extend? A. That depends on the season.

Q. In a wet season, how far would it extend?

A. In a wet season, it possibly subirrigates almost to the end.

Q. Almost to the end of your place?

A. Yes, eastward.

Q. Now, then, that is in the northeast quarter—the northeast corner of the northwest quarter of section 24. Is that where that land lies, at the end of your piece?

(Testimony of Wm. H. Saylor.)

A. I do not remember it in point of view of the section, but I would say you are indicating by your pointing, you are pointing at the part I have in mind.

Q. Will you step down here to the map? This is the Garwood land (indicating)?

A. Yes, sir. [125]

Q. Do you recognize this as your land?

A. Yes, sir.

Q. Is that a correct detail of the respective pieces, so far as you know? A. So far as I know, yes.

Q. I understand you to say, in wet season that sub-irrigation on your tract of land would extend almost—

A. (Intg.) I mean in wet season such as we have now, and can grow crops.

Q. In the west portion?

A. Yes, sir, and as produced now.

Q. But not quite to the end at any time; is that correct?

A. Almost in any season there will be some alfalfa; some seasons you can grow corn and some seasons not. This is a season when the corn is growing all up there, and the alfalfa. My land is to the west of the lower portion of the Garwood ranch. My crops were a failure then. The alfalfa will continue to grow through a season of that kind, but it will be short. Alfalfa is deeper rooted than potatoes and corn. I would not say how many tons of alfalfa to the acre, the land would produce, because I have only been there when we had one dry year. We only harvested the alfalfa twice, we grazed after that. I

(Testimony of Wm. H. Saylor.)

have not been sufficiently over the land of the Garwood place to form an idea as to the extent of the subirrigation. I have seen water on that land to the east of my place. I was only up there a day at a time, and do not know how long it would stay there. I have not seen water over all of it. I have seen water over certain areas. I could not define just now from recollection. Certain reclamation work has been done in this neighborhood to keep the water from backing over the land, to save that land, and the land similarly situated from the overflow. That work has been extensive and expensive.

Cross-examination.

I have never resided in Sutter County. I was never on my own ranch to exceed ten hours at one time. [126]

**Testimony of T. J. Mulvany, for Plaintiff (Recalled).**

T. J. MULVANY, recalled for the plaintiff, testified as follows:

I have lived in that neighborhood since '77. I am familiar with that land in the district 1001 in reference to overflow, and in reference to the character, quality and condition of the land. I understand what is meant by subirrigated land. I have an understanding of what is meant by river-bottom land. I am familiar with this reclamation district 1001 with respect to the overflow of the rear end of those ranches. I have been until recently one of the reclamation trustees of that district. During the year 1911 and prior thereto the rear end of this land

(Testimony of T. J. Mulvany.)

was subject to overflow. The rear portion of the Garwood ranch is not subirrigated. The subirrigation does not extend the same distance from the river at all points along the river; it varies. It varies from one-fourth to one-half a mile. On the Garwood place the subirrigation extends about one-third of the ranch, possibly one-half. The soil at the far end of the ranch is a heavy soil; it borders on adobe, clay. It is not such a character of soil as to be readily permeated. The rear land is not what is considered alfalfa land. It is spoken of as grain land. During the year 1911, and prior thereto, if alfalfa were planted on that land the overflow might destroy it at any time, and if there was no overflow, it would require to be supplied with water. If it were irrigated, it would produce some alfalfa. I do not think it would be a profitable enterprise to try to raise alfalfa on that rear land. I cannot say what the yield would be. It would be rather light. I have seen a great deal of land planted with alfalfa under artificial irrigation. It is my understanding that there is a difference [127] in value between alfalfa produced on subirrigated land, and that produced by artificial irrigation. The ordinary irrigated alfalfa is worth more; it is of a different quality; it is not so strong, those dealing in it tell me. I do not know myself, I never raised that kind. Most any land will produce alfalfa with water, but not in paying quantities. The cost of water would have to be considered if alfalfa were raised on the rear end of the place. The yield would be small in com-



(Testimony of T. J. Mulvany.)

parison to the other land. I estimate that the land on that place, not subirrigated, consists of the 160 acres; that is, the northeast quarter of section 24, and probably 80 acres north of the quarter section. That much of the land is not subirrigated land. I have lived there since '77, or thereabouts, and have been familiar with the various sales of real estate during that time. In a general way, I am familiar with the value of land in that district. I have bought land myself, and heard of other deals. I have been a land dealer for many years. I would know land near my own up there. I was a trustee of the district. In a general way, I have knowledge of the market value of the land in that river bottom there. That rear portion of the Garwood place, of which I speak, in 1911 was worth about \$60 an acre. I would place that quarter section, and probably one-third of the ranch at the east side, at \$60 an acre. The land above the quarter section is worth a little more. There is no subirrigation there, but the quality of land is better. It has a little higher contour. I figure that it would be worth about \$75 an acre in 1911. As to any land lying outside of the old levee, that land in 1911 would be worth about \$10 an acre for the timber that is on it. As to any land existing outside of the levee, or across the river, there was land on that side years ago, which is not there now. Probably about 70 acres, [128] and that is in the bottom of the river. That is now in the bottom of the river. That is, it was in 1911. The river channel ran right over that, except a small portion, may-

(Testimony of T. J. Mulvany.)

be an acre or so, and a little piece west of the old levee, of three or four acres, probably five acres. There was four or five acres of good land, that triangular piece. It is there, it was there in 1911, but the portion west of that, about 70 acres, is practically all gone. That has been all taken by the river. It was taken about 25 years ago. There is no land there. It is water—the river, the main current, the greater portion of it. Yes, sir, I have raised alfalfa, and have had experience in growing alfalfa. As to how much water it takes to be fatal to alfalfa, and as to how long it takes the water standing on alfalfa, to injure the alfalfa, it depends upon the temperature and growth of the alfalfa. New alfalfa in cold water will stand probably a week. In warm water it is easily destroyed. The temperature is material. Warm water will kill alfalfa in two or three days. Some years it gets warm up there in May and June. Ordinarily it runs from 80 to 90 degrees, sometimes 100 and 110 in May and June. I have seen the Garwood place overflowed in June a great many years ago. Over 20 years ago there was a crop of barley on the field, and it was destroyed in June by the backwater backing up. Yes, sir, it was destroyed in June by water backing up. I do not know how long the water stayed, but it was enough to destroy the crop. Those individual levees in that district were built there to protect the owners' lands from the overflow, so that alfalfa could be raised, whatever crops there were. The Garwood place in 1911 was subject to overflow from Bear River. It was

(Testimony of T. J. Mulvany.)

also subject to overflow at times from Coon Creek, and was subject to overflow from the tule water or basin. That water [129] came from the Feather River or from the Sacramento River. In high water it came in from the back. The artificial channel, of which you speak, was commenced and completed in 1913. Previous to 1913 the main body of the river went around the bend, and when the river was high it went across the bend through the timber, all over it. Since 1891, or 1890, there had been for a number of years an old levee to the east of the cut-off. When the cut-off was made, they put in additional levees and strengthened the old ones. In 1911 during high water, the water spread all over the land outside of the old levee. In high water the boat went straight down instead of around the bend. In low water the boat was compelled to go around. I do not suppose that in low-water times there was any water where the artificial channel is now. I have not been there those times; I have not been on the ground. During all the time the water was high, the water was there in that channel. During the past 25 years the river has worked south and covered about 70 acres, or more, of land off this particular property. Referring now to the back land that would overflow from the back waters whenever there was high water in the tules, in a dry season at times it would pass the winter without overflowing, nearly every second or third year. I have seen it every time when it was not overflowed.

(Testimony of T. J. Mulvany.)

Cross-examination.

During flood water the entire section west of the old levee was overflowed from the old levee, clear across the old channel of the Feather River. As near as I know, from the river clear on across the old Sutter Tule Basin, except the Southern Pacific Railroad grade. A man by the name of Ewing had a crop of barley destroyed on this Scheiber ranch in the month of June. Ewing lived there over 20 years ago. I think the Scheibers have been [130] living there about 20 years, and it was prior to that, Ewing lived there. Yes, I have been over the northeast quarter of section 24. I passed by there probably every year. I have looked over it. Yes, sir, in years past I have been on the land outside of the road. I do not recall what time I was there on the field. I think I have been on the quarter section of the land inside the fence in the last ten years. I would not say positively at this time. I have been on both sides of it along the road. I think I have been on the land in the last ten years. (At this point the map was introduced in evidence, marked "Plaintiff's Exhibit No. 2.") Yes, I think I have been right on the land. I think I have driven through there in the last ten years. Yes, I have driven through there to the house, and I have been out the other way. I have been through there three or four times in the last ten years. For its size, the Scheiber ranch is rated as one of the best alfalfa ranches in the community, probably more alfalfa land in one body. The Scheiber ranch is the largest.

(Testimony of T. J. Mulvany.)

There are other ranches that are larger in proportion of alfalfa. I state the price at \$60 an acre in 1911. There has been no sale made up there for some time.

Q. Land has a market value, I presume, even if no sale has been made?

A. I do not know how to determine that. I understood Saylor paid \$100 an acre for his ranch. As near as I know, Borgman paid \$60 an acre for his place. It is difficult to get the exact cost, because the deeds do not show the amount.

Q. The land outside the old levee, between the old levee and the old channel, the old river channel never was rated as having any particular value?

A. Which piece?

Q. It was all timber land. I refer to the land between the old levee and the old river channel.

A. I do not know of any old [131] river channel connected with that piece.

Q. Do you know where the river ran before the old artificial cut was made?

A. There are two pieces there distinct in my mind, the larger one between the old levee and the new levee about 70 odd acres of land, and then this other—

Q. —We are speaking now of the land as it existed in 1911. There was only one levee there at that time, was there not? A. Yes, sir, that is all.

Q. The land between the old levee and the old river channel had no particular value at that time, did it?

A. There is no old river channel there at that point.



(Testimony of T. J. Mulvany.)

Q. Where did the river run?

A. It runs now as it did years ago, in the same place.

Q. The same place?      A. Yes, sir.

Q. Didn't you just state a few moments ago it was one body of water from the old levee to the Sutter Basin except where the Southern Pacific grade is?

A. Not the one that washed away.

Q. Are you familiar with *the where* the river ran 20 years ago there?      A. Yes, sir.

Q. I will put the question this way to you: the land lying between the old levee and the old river channel as it existed 20 years ago on the Scheiber ranch had no particular value at any time since then?

A. It was washed away before that, consequently there is no value at all of that portion.

Q. Was it all washed away?

A. The river was running over it.

Mr. HEWITT.—I ask that the answer go out, and that the witness answer the question.

Q. Read the question, Mr. Reporter.

The COURT.—Q. Try to answer the question, if you can. Read the [132] question, Mr. Reporter.

(The reporter reads the question.)

Mr. HEWITT.—Q. I want to know if all that land lying west of the old levee was washed away?

A. Not all; two or three acres, I think.

Q. This mark here on the map represents the old levee?      A. Yes, sir.

Q. Was any of this land in here washed away?

(Testimony of T. J. Mulvany.)

A. No, sir.

Q. There is some 60 or 70 acres there? A. Yes, sir; there was another piece I was speaking of that was washed away.

Q. The piece I was speaking of is between the old levee and where the old river channel ran 20 years ago?

A. The river runs right now where it did then on that piece; there is no change there. There is a change on the other piece.

Q. Then there was some land on the other side of the river that belonged to the Scheiber ranch?

A. I do not know what is on the other side of the river.

Q. Can you recall where lot 4 of the southeast quarter section of 11 is? A. No, sir.

Q. Or lot 5 of the southeast quarter section of 11?

A. I am not familiar with the terms.

Q. Do you know where section 14 is located there with reference to the Scheiber ranch? A. Section 14?

Q. Yes. A. I never studied the ranch, I do not know the description.

Q. You do not know if any of the land represented by those lots was washed away, or not, do you?

A. I cannot identify the lots with the land.

Yes, sir, I have seen the northeast quarter of section 24 of the Scheiber ranch covered with water in June. That was [133] the only time, in June. There was extraordinary weather in June of that year. That was about the only time I saw it—in

(Testimony of T. J. Mulvany.)

June. I was one of the trustees of reclamation district 1001. I held office four years. The reclamation district was formed in 1911. During a session of the Legislature, the first month in 1911. Yes, sir, this artificial channel was constructed by the reclamation district. It was constructed with a dredger. The channel was made 150 feet wide, and since then it has been enlarged by the flow of the river. Yes, sir. I have been over where the old channel was, the old river channel—in '91. That land between the artificial channel and the old levee has always been overflowed with wild timber for fire purposes; I never saw it cultivated. It was a wood lot. I was on the west side of the cut-off about 25 years ago when the owner was putting up a house. A few years later, I think in '91, the levee broke near it. The other portion went away, and the land went with it, and consequently I have not been there, unless on a boat. I couldn't be on that part of the ranch after it was washed away, unless I traveled up and down the river. The river channel at that point was consequently working south. I should judge it was 700 or 800 feet wide in width. It kept on working down and making a new channel. After it worked south it maintained the same width. I never had any trouble with the defendants. I never had any trouble with Morris Scheiber in reference to any creamery business. I do not know whether he worked against me at the election as a reclamation trustee at the last election; probably he did. I do not know what he did. I know he did not sup-

(Testimony of T. J. Mulvany.)

port me. I had some trouble, you were the attorney with Bennie Scheiber, not these three men. [134]

#### Redirect Examination.

Yes, sir, I said that the Saylor ranch was sold at \$100 an acre. I believe that there are 100 acres to the place. The Saylor ranch lies between the river and that portion of the Garwood place, which I stated was worth from \$60 to \$75 an acre. The far easterly corner of the Saylor ranch is separated by the public highway from the westerly boundary of the land on the Garwood place, which I stated was not subirrigated. The easterly corner of the Saylor ranch, the portion of the Saylor ranch which was not subirrigated, lies clear to the west of that portion of the Scheiber ranch, which I stated was not alfalfa land. It is much closer to the river. The Borgman place lies directly west of the quarter section comprising the southeasterly end of the Garwood land. The Borgman place lies west of this Garwood land. The Borgman place is almost coincident with the northwest quarter—of the northwest quarter of section 24, township 12, north range 3 east. In reference to subirrigation, the Borgman place is for that reason considerably better situated in reference to subirrigation, than the lower portion of the Garwood land.

#### Recross-examination.

The public highway is the only thing which separates the Saylor place from the northeast quarter of section 24. The Saylor ranch is on the westerly side

(Testimony of T. J. Mulvany.)

of the public road. Section 24 is on the easterly side. The road is 40 or 60 feet wide.

#### Redirect Examination.

The western portion of the Saylor ranch is very fine alfalfa land. A few acres at the east end of it is outside the good alfalfa belt, and it produces a couple of crops to the year, while the other all produces 5 or 6. Probably 100 or 90 acres of the [135] Saylor place is good alfalfa land. The best of it is on the west side, and as you go east there is a change. I would consider all of the Saylor ranch good alfalfa land with the exception of that little corner, and a portion of the ranch that was covered with sand several years ago. The best portion of the Saylor ranch is very fine alfalfa land. It is as good as any along the river, it will raise 5 or 6 crops without irrigation. The Borgman place is irrigated by pumping water from wells, they pump a great deal of water. The Borgman place is artificially irrigated.

#### Recross-examination.

Mr. HEWITT.—Q. Is the Borgman place entirely irrigated by water pumped from wells? A. I think that the water is conducted over most of it. His place is nicely improved. The water is conducted in cement pipes to a large portion, and I think it covers the whole of it except 40 acres.

Q. I do not want to know what you think, I want to know whether the place is irrigated by artificial irrigation.

A. Not the last time I was there; he was gradually undertaking the irrigation of it.



**Testimony of Clinton L. White, for Defendant.**

CLINTON L. WHITE, called for the defendant, testified as follows:

I am an attorney at law and have been for nearly 40 years, practicing in this state during that time. I have lived and had my office in Sacramento during that time. I cannot remember the exact date that I first became acquainted with the plaintiff, Isabelle Garwood. I can fix the date pretty accurately by the date of the contract that was signed between the Scheiber Brothers and Miss Garwood. (It admitted by counsel to be September 27th, 1911.) [136] The date of the contract was September 27th, 1911. I became acquainted a day or two before that contract was signed. Mr. U. L. Dike first came to me and said that his firm had been instrumental in making the sale of some property, and that the contract was going to be rather intricate, and they wanted me to prepare it. They thought it was beyond their ability, and he gave me the names and gave me memoranda concerning it. (The contract of September 27th, 1911, was identified by the witness and marked defendants' Exhibit "A" for identification.) I have seen this paper dated Sacramento, California, September 25th, 1911, before. I am not sure that I saw it until just a few days ago. This may have been exhibited to me by Mr. Dike about that time. I cannot recall of having seen this paper until three or four or five days ago—either Saturday or Monday of this week. It was handed to me by Mr. Miller in my office in Sacramento.

(Testimony of Clinton L. White.)

(Paper marked, Defendants' Exhibit "B" for identification.) Mr. Dike first came to me, and he had memoranda of his own. I did not pay very much attention to it, and I made my own memoranda from the conversation. I think I saw all of the parties to the contract before I finished the contract, ready for signature. I think the contract was read over to them all. They were all there present in my office at that time. They all signed it in the office at the same time. In the drawing of that contract I did not represent anybody in particular; I represented all parties; it was a mutual matter. They had come in and directed me to draw a contract, and I did so. I do not represent one any more than another. I did not understand there was any controversy between them. They wanted a fair contract, and I tried to draw such a one. Yes, sir, I endeavored to favor one of those parties in a way. I intervened in several matters for Miss Garwood. About a [137] day before the final consummation of the matter, the execution of the deeds and mortgages, one of the Scheibers came to me and explained that the land was in the new reclamation district, and that the district was going to use a part of their levee, and they were going to issue scrip, as he called it, a reclamation warrant, where they were going to reconstruct the levee, making it nearer the river, and he wanted to know of me if I did not think that they were entitled to the scrip, and I told them that I thought Miss Garwood was entitled to the scrip. She was not there at the time. That was a day or two just

(Testimony of Clinton L. White.)

before the deeds and mortgages were executed, and on the day of the final transaction when the deeds and mortgages were executed, I called Miss Garwood's attention to the fact that the levee was going to be changed in that reclamation district, and that she would be entitled to some scrip; that she could use it in paying reclamation assessments. They were going to build the levee nearer to the river, and that would result in her having more land inside of the levee, more land for her. On the day the deeds and mortgages were executed, and while we were talking about the matter of scrip she would be entitled to receive, I made this memorandum and threw it on my desk. I made it complete then except for the figures. I am not sure that the figures showing the amount of script were put in then; it may be that I 'phoned to some office, or the office of the Natomas Consolidated to obtain the amount, but I am not sure. I knew that it would be somewhere about \$5,000, but whether I got the information over the 'phone at that time, or a little later, in regard to the amount, and put it in, I cannot say. It is slightly heavier pencil marked than the other. (At this point the memorandum marked defendants' Exhibit "C" admitted in evidence.) After the agreement of September 27th, 1911, and before the execution of the deed and [138] mortgages I rendered an opinion of title on the property. That document, which you show me, marked "Opinion of Title" was drawn by me for her, that is the opinion which I made for her. I think I had two or

(Testimony of Clinton L. White.)

three of them written. I think I signed two. They were made on a typewriter, and were just the same. That is the one I signed at the time. I do not know where you got it. My recollection is I sent one of the opinions to her by mail. She received it before the deal was consummated. On the 23d of October, 1911, I wrote her a letter in which I sent her the Opinion of Title. I cannot recall any circumstances about it, but I have no reason to doubt that she received it. She did not pay me for the opinion, no sir. (At this point, Opinion introduced in evidence marked Defendants' Exhibit "D.") It was mailed to the plaintiff in one of our large envelopes with a return in 5 days if not delivered put on it. My recollection is she discussed the matter and asked me questions about it. I mailed it to her about the 23d day of October, 1911. The deal was consummated on November 1st.

"Q. Do you recall whether or not Miss Garwood or anyone else asked you to explain the words '600 acres more or less' contained in the contract of September 27th, 1911, or in the receipt which Mr. Dike gave to Miss Garwood and which I have had marked Defendants' Exhibit "B" for identification? A. I cannot say anything about the receipt that Mr. Dike gave. I have some faint impression that Miss Garwood may have asked me about the expression more or less, and that I explained to her, as I would explain to anybody about that, the expression of the acreage was an approximate statement of the amount of it; that [139] there might be



(Testimony of Clinton L. White.)

more or there might be less than 600 acres. Q. Did you at that time or at any other time say to Miss Garwood that the expression 'more or less' in connection with the number of acres was a mere law term? A. I cannot recall any such thing. In 40 years of law practice I never used that expression in consulting with a client. I either give an explanation to them or I do not. I do not use that expression. I never used the expression to anyone saying it was a law term. Q. Did Miss Garwood say to you at any time that it was her understanding that she was to get 600 acres of the finest alfalfa land in the State of California? A. I cannot recall that she used any expression of that kind. She spoke enthusiastically to me about the place. I have a faint recollection she asked me my opinion of the place and I told her I did not know—"

I told her that it was in a good neighborhood and that alfalfa land was a good thing in California. She did not explain to me anything about she was to get 600 acres of the finest alfalfa land in the State recollection that there was served on me a paper signed by Miss Garwood, consisting of a notice of rescission, or a deed, or offer of a deed of reconveyance. The Scheiber boys brought in several of them. My recollection is that one was served on me from Mr. Devlin's office, and then a few days later a lot of duplicates were brought in by the Scheibers. The notice to Joseph Scheiber and Frances Scheiber, his wife, Morris Scheiber and Emma Scheiber, his wife, and John Scheiber and Anna Scheiber, his wife, dated the —— day of March, 1912, was marked



(Testimony of Clinton L. White.)

Defendants' Exhibit "E" for identification, and was introduced in evidence by plaintiff and marked "Plaintiff's Exhibit 4." [140]

Cross-examination.

This transaction took place in 1911. I hardly think my memory is hazy on the details of the transaction. I have not any accurate memory of the words a person uses in conversation with me, but I have a pretty accurate memory of what occurred in regard to this matter, because it was emphasized sometime about January or February, 1912, when Miss Garwood came to my office and said she had been cheated by the Scheibers and wanted me to commence suit against them. I knew of nothing in the transaction in any way but what was perfectly fair. At the time the contract was signed the Scheibers were present. That is my recollection. The two of them were there, I am sure that two of them were there. I will not say positively whether or not the third one was there. They all subscribed their signatures to this contract. I have an impression we sent the contract out to be signed by one of them. I think those that were there took the contract back to be signed. I do not think that Dr. Ramos was there. Miss Garwood was there; she signed the contract in my office. Mr. Dike was here. Those persons were in my office, and there may have been others. I read the contract to them. I feel quite sure Miss Garwood did not interrupt me when I came to the words "more or less." I will not say with absolute certainty, but to the best

(Testimony of Clinton L. White.)

of my recollection she did not make any interruption at all. I would not say that she said something about the words "more or less." I did not say so in my direct examination. Oh, yes, I did say something about the words "more or less." I said in my direct examination that I cannot recollect with certainty whether she asked me about the words "more or less" or not; that if she asked me for an explanation of it I told her as I would tell anybody else that the term "more or less" would mean some approximate [141] statement, there might be more and there might be less than 600 acres. I do not know how much more or less. I did not tell Miss Garwood at that time that the words "more or less" were of no particular significance; that when it said 600 acres it meant 600 acres. If I were to be asked about my understanding of the term "more or less," I would explain to them that the statement of the acreage would give way to the boundaries of the land and more accurate description. There were two or three descriptions of the property in that document. It has always been my understanding of the law for a great many years past that the accurate description of metes and bounds takes the preference over acreage. Where the words "600 acres more or less" are used, without any metes or bounds given as to what it would mean, that would depend. I would not say how much of a fraction the words "more or less" provided for. I would not think 25 per cent; I do not think that 25 per cent would be with-

(Testimony of Clinton L. White.)

in the meaning of the words "more or less." My practice and observation has led me to believe that theoretically surveying is practical, and in practice it is not. I think the expression "more or less" would cover an inaccuracy of considerably more than 5 acres. I think that such a small percentage as that would not be a matter of complaint. As to what I said to Miss Garwood in reference to the meaning of the words "more or less," I could not give you the exact words that I said, to anybody in a conversation that occurred 4 years ago. I do not recall that any of the Scheiber Brothers spoke or said anything about the number of acres. I do not think that Miss Garwood interrupted me. The talk about the script came about the time the mortgages were executed. I think that was the first of November. I do not think she knew that she was going to get a rebate. I think I disclosed it to her for [142] the first time. She asked me what I meant by scrip. I do not think I was the attorney for the California Colonization Company. I do not know of being the attorney for Mr. Dike. Mr. Dike and different real estate men used to come into the office to have contracts drawn up, and very frequently to get Opinions of Title when they made a sale. I was acquainted with Mr. Dike and Mr. Crane. The incorporation papers of the California Colonization Company may have been prepared in our office, but I am quite sure that personally I had nothing to do with it. I do not know that the corporation papers were prepared in my office.

(Testimony of Clinton L. White.)

I say that it is possible they may have been. The California Colonization Company may have existed six months or a year before this contract was made. I do not know how long it existed afterwards. There were a lot of papers prepared one way and another—bills were made up for them, and items charged on our books by somebody in the outer office who looked over the record, and with the exception of the \$25 marked on the opinion as being the charge for it, the bookkeeper or somebody in the outer office must have made an estimate of what was fair. I do not think I made a statement at all about it. For instance, the charge for the preparation of the deed was made against the Scheiber Brothers. The charge for the preparation of the mortgages was made against Miss Garwood. My recollection is that the charge for the preliminary contract was made against the Scheibers. I do not know why, I did not order it done. I do not think that anything was ever paid by the California Colonization Company. I do not think we charged anything against them. We did not consider that they had employed us in the matter. I do not think Miss Garwood avoided making a payment. My recollection is she asked me before the transaction was completed something about making [143] a payment, and the work had not all been finished yet, and there had been no bill made out, and I gave her to understand that the time was not ripe for the presentation of a bill yet, as there were other papers still to be prepared. My impression

(Testimony of Clinton L. White.)

is it was before the deed and mortgages were made that she made the statement about what had been done up to that time.

**Testimony of Isabelle Garwood, for Plaintiff.**

ISABELLE GARWOOD, plaintiff, called upon her own behalf, testified as follows:

I am Isabelle Garwood, plaintiff in this action. My home is in New York City. I am a resident of the State of New York. I first arrived in Sacramento in September, 1911; just as the State Fair was closing. I first went to the office of the California Colonization Company to talk about buying some acreage. Upon the occasion of my first visit to the office of that Company, I told them I had \$6,000, and that I wanted to buy some acreage. They wanted to show me some land, and I told them that I was simply making inquiry and would not look at anything until there was a gentleman present, in whom I had the greatest confidence, who would advise me. I told them I would bring the gentleman to the office. He came, and I took him to the office in the morning of the 20th of September, 1911; that was on a Wednesday. This man was Dr. Ramos, F. I. Ramos. I introduced him to them as Dr. Ramos, and said now I would go out and look at the property.

I told the officials of the California Colonization Company that I was engaged to be married to Dr. Ramos. I told this to Mr. Crane and Mr. Dike. On that day, on the 20th of September, 1911, we went out to look at land. We went to some island down



(Testimony of Isabelle Garwood.)

the river—Mr. Crane, the chauffeur, the Doctor and myself—four of us. On the way back they stopped and left me in the car on the levee, and the three men went over to a saloon and stayed there from 20 minutes to [144] a half hour, a good half hour I think it was. All three of them went and left me there. We then proceeded on our way to Sacramento.

Q. In the meantime when you were driving—what was said after that on the way back?

A. The doctor said, I think, “Alfalfa is considered a great thing.”

Mr. MILLER.—We object to any conversations or representations made by any of the parties or any of the alleged agents or by anyone excepting the defendants on the ground that there is not shown to be any authority whatsoever in anyone to make any representations at all. The contract here was a contract whereby a middle man was employed to find a purchaser, and the middle man had no authority except to bring the parties together, no authority to make any representation or anything of that kind. I submit the objection upon the ground it is hearsay, immaterial, irrelevant and incompetent.

The COURT.—I will hear the testimony. The objection is overruled.

Mr. MILLER.—They had no right to delegate that authority to any agent or subagent.

The COURT.—I will pass upon that question later.

Mr. Bucholz said, “If you are buying alfalfa land, you ought to buy a dairy; I can sell you 600

(Testimony of Isabelle Garwood.)

acres of the finest land for alfalfa in this State at \$125 an acre." Then Mr. Crane, who was sitting beside me, spoke up and said, "That is Dike's pet scheme, he wanted to form a corporation, and he had the superintendent already engaged to sell stock." This occurred when we were riding back on the levee. We rode 30 miles on the levee; I had never seen a levee in my life and I commented on it. They told me they were going to St. Andrews Island, or something like that. They said we rode 30 miles on the levee. The river was right along side of it on one side, and there were farms on the other side. That was the [145] first time I had ever seen a levee in my life. I did not know anything about the country. In the automobile Mr. Crane said, "If you will step into the office on the way back, we will show you the papers, and tell you about this land," and when we returned, we went there. He said, "Dike has gone to get hold of Brown on the telephone," and they telephoned to Brown, and Brown replied that he would send the papers, but that he could not come until Saturday. The next morning Mr. Dike took us to this land—Mr. Dike, the chauffeur and the Doctor and myself made up the party.

Q. As you were leaving do you recall anything that was said by any of the gentlemen?

A. Yes. I think I was in the carriage, in the auto, and Crane came out and said "Miss Garwood, the doctor is the most charming person out here I have ever met, I wish he would join us in business; I wish he was going to be a partner and live here, but even

(Testimony of Isabelle Garwood.)

if he didn't live here that we would give him commissions, his mere looks would sell property," that he was the most charming person he had ever seen in his life.

The next day we visited the ranch. We went by automobile from Sacramento to the land. We went in through Triplin. We did not go to Nicolaus. We did not stop until we reached the ranch-house. I had a sprained ankle at the time, and could not leave the automobile at all, and as we passed up the levee in the automobile Mr. Dike asked me if I wanted to go up on the levee and look over the country, and I told him "Oh, no; I want to see the farm, I could not walk on a hill." That was all that was said. Then we went on down to the ranch-house. Then I got out of the car, and I stopped at the ranch-house. They took the auto back to the stables, and the Doctor and two of the Scheiber men went down there alongside of the stables to talk. I was on the porch, and they talked about going to Germany, and wanted to know if I was German. I did not go around the ranch any place; I sat on the porch.

After lunch Dike said we would go and see the animals. I said, [146] "You will have to bring the car, I cannot go." I stopped there on the porch, and the Doctor said, "Don't you move, I will see them, and that is all that is necessary, you do not have to look at them." I sat there and talked with the wives, and with one or two men, as many as there were there. The Doctor went around with Dike and the chauffeur. The wives and one or two of the men

(Testimony of Isabelle Garwood.)

remained with me at the ranch-house. We arrived at the ranch-house a little before lunch. We had lunch there. I think we left Sacramento a little before 10:00 o'clock in the morning. I think we left for home at about 2:00 o'clock. I had some conversation with one of the three brothers there at the house. This conversation took place when the wives were there and one or two of the men, I am not sure. Dr. Ramos and Mr. Dike were looking at the animals, and the fields. [147]

Q. Now, what conversation did you have with any one of the Scheiber men, the Scheiber Brothers?

A. Well, I had no idea of buying the ranch, I was trying to entertain them, and I said, "Where is this land?" and they pointed at the levee and they said "along that green line"—

Q. Do you remember which one of the brothers that was? A. I think it was Morris, the little one. Right along that green line to the white house. And I said, "What green line" and they made it more explicit and they said "Down that fence to those trees and across those trees, from the lower fence up to that grove." That is the only description I ever heard of the property in my life.

Q. What did he indicate when he said "along that green line"?

A. The levee. Q. He pointed to the levee? A. He pointed to the levee, to the white house, which was a stable.

Q. Is that the only description which he gave you?

A. That is the only description I ever had of the land.

(Testimony of Isabelle Garwood.)

Q. Did you ask him anything about that land in respect to its quality or points of desirability? A. I said, "Tell me all about this land" and they spoke very favorably of it in every way. Then I said, "Well, you have told me all the good things about the land, is there anything bad about it" and they said, "Nothing at all, it is all alike, you see, clear level land."

Q. Did you know what river lay behind that levee? A. I thought it was the Sacramento; I thought that was the same levee I had been on before. Q. What river do you know it to be now?

A. The Feather River. I had never heard of the Feather River. I was staying in Sacramento.

Q. That was before there was any new levee built there? A. The new levee was not built.

Q. Now, then, how long did you stay there at the ranch-house altogether? A. I think we must have been there a couple of [148] hours; maybe not as long as that; we were quite awhile at the lunch table; maybe not over an hour and a half.

Q. Then the doctor and Mr. Dyke and the rest of them finally returned? A. Then we drove back to the station.

Q. Which way did you go out? A. It seems to me we went back the same way. Q. Are you able to state whether you went back on the levee by way of Nicolaus, or near to the town of Nicolaus?

A. I could not tell you which way we went. I was talking and not paying any attention, I was not interested in the land at the time at all. Q. Now, then,



(Testimony of Isabelle Garwood.)

you returned to Sacramento; is that the idea?

A. Yes, then I returned to Sacramento.

Q. On the trip up from Sacramento did Mr. Dyke make any reference to this land or say anything to you about this ranch in respect to overflow waters?

A. Mr. Dyke showed me some land overflowed and said that that did not.

Mr. HEWITT.—We wish this to go in subject to our objection.

Mr. MILLER.—I understand all these conversations, much of which we claim is immaterial and irrelevant, are subject to our objection.

The COURT.—Yes.

Mr. MACOMBER.—On the occasion of the trip up to the ranch from Sacramento on this particular day what did Mr. Dyke say with reference to the overflow? A. He said—I had never heard of overflow land in my life, I had never been in Sacramento before; when I went there the doctor was not there and I went to San Francisco and came back again when he came, don't you know, and I knew nothing about overflow land, and I said that they told me they would sell me a dairy, and he said, "Don't you buy any overflow land"; then going through the country up to the ranch he pointed out a gulley and said, "This land over here overflows"; [149] then we went on to the other and he said "That don't overflow" and he told me if I bought it to have—

Q. —We do not care anything about what he told you in that respect because that is not part of the case. A. He said, "The Natomas land overflows and

(Testimony of Isabelle Garwood.)

the Natomas people would not sell their land under \$250 an acre, they have got to stop that overflow too"; and he said, "You will get your land for \$125 an acre and it is already stopped; there is nothing there, it is ready for use." He said, "The Natomas Company even after they stopped their overflow have to turn up the land for a year before it could be used."

Q. We do not care about that. What did he say with respect to this particular land that you bought?

A. That this was the finest alfalfa land in the State, that I could sell it for three times what I paid for it if I held it until the Fair in small farms, from 5 to 20 acres; he said he would cut it up.

Q. What did he say about it with respect to the overflow? A. He said there was no overflow; he said that, "Your levee is built and you will get \$5,000 back and the people whose levee is not built they have got to spend money but you have got nothing to pay, you will get \$5,000 and the Scheibers told me the same thing. Q. Did any of the Scheibers make the same remark? A. They said, "You will have nothing to pay," yes.

Mr. HEWITT.—We object to this conversation, there is no time or place fixed. A. This was at the house that they told me that, when I was sitting on the porch.

Mr. MACOMBER.—Q. Upon the occasion of that first visit? A. Upon the first visit. They said, "The levee is built and you will have nothing to pay." Q. Which one of the Scheibers told you that?

(Testimony of Isabelle Garwood.)

A. Morris, I think Q. The same one? A. Yes, I think he was the one that stayed and talked with me. [150] Q. Then you returned? A. To Sacramento, Yes. Q. When you returned to Sacramento what did you do? A. On the way back Dyke showed me a check and told me what a magnificent business the dairy business was. Q. We do not care anything about that. A. Showing how much they made every month. Q. Now, wait a moment. Did you see any of the officials of the California Colonization Company the following day? A. The next day they took us to Auburn? Q. What day of the week was that or what day of the month? A. Wednesday we went to the ranch and Thursday we went to Auburn. Q. Aren't you mistaken on your dates? A. Wednesday we went down the river, Thursday we went to the ranch and Friday to Auburn. I have forgotten about going down the river. That was the first day. Friday morning we went to Auburn; we went to the ranch. They took me to Auburn to see whether I would rather have that than the other. Q. That is, Auburn or the ranch? A. Or the ranch. Q. Then on Saturday, the next day following? A. (Intg.) Saturday was the day that Brown came and we met him at Davis or Dixon. Q. You say that you met Mr. Brown? A. On Saturday. Q. Who composed the party upon that occasion? A. Dyke and the chauffeur and the doctor and myself. Q. Mr. Dyke and the chauffeur and the doctor and yourself? A. Yes. I did not get out of the carriage. They said, "Don't you get out, you don't need to see it";

(Testimony of Isabelle Garwood.)

the doctor said, "We will look at it, you needn't get out" because I couldn't walk around on my ankle.

Q. Doctor Ramos and the chauffeur and Mr. Dyke you say went and looked at the dairy? A. They went and looked at everything.

Q. What character of dairy was that? A. A certified dairy.

Q. Did you meet Mr. Brown there? A. I met Mr. Brown there.

Q. What time of the day was it you met Mr. Brown?

A. I don't know, but it was, well, it was along in the afternoon I think; I don't think we started very early in the morning.

Q. And then you returned to Sacramento? A. Then we returned to [151] Sacra-

mento. Q. How about Mr. Brown, what did he do?

A. On the way back Mr. Brown talked about alfalfa that grew on irrigated ground, that it was not as good as alfalfa growing on subirrigated land, that alfalfa that grew on subirrigated land when you burned it left a residue and the other did not, it was more substantial.

Q. What did they say about the land in Sutter County, the Scheiber Brothers' land, with respect to subirrigation? A. They said it was thoroughly subirrigated.

Q. Did they tell you any of it was not subirrigated? A. No, they said it was all subirrigated, and 600 acres of the finest alfalfa

land in the State. Q. Who told you that? A. They all told me.

Mr. MILLER.—These are all material matters; we object to leading questions on vital and material points in the case.

The COURT.—Yes, counsel must not lead the witness.



(Testimony of Isabelle Garwood.)

Mr. MACOMBER.—Tell us exactly what was said about the land? A. They said it was all subirrigated land, that it was the finest alfalfa land in the State; that it would raise two crops a year; that it would raise from 8 to 10 tons of alfalfa a year, 7 to 8 cuttings, 6 to 8 cuttings, and under the right-hand levee there was one three-cornered field that would cut 8 times. This all made an impression on me because I never heard of alfalfa in my life before. Q. Did you meet Mr. Brown in company with any of the other gentlemen that evening, Saturday evening? A. Yes, we all went over to the office that evening and talked until 11 o'clock about it. Q. What was said? A. It was a magnificent farm, and that it would give me a good income in the meantime. I went very heavily in debt to buy this [152] farm, I had only \$6,000. I borrowed \$32,000 in New York, and I had \$39,500 mortgage in this country, \$19,500 the first mortgage, and \$20,000 the second mortgage. Q. That is all right. We do not care anything about that. A. I would not have gone so heavily in debt only I wished to get the \$5,000 back, to make it easier. Q. When the Scheiber Brothers, whichever one it was, spoke of your getting \$5,000 back at the ranch, how did you understand you were to get that money? A. In money. Then I said, "I am in debt \$35,000, and it will pay me some money until I get something." Q. Was there any technical term used to you other than money, as to the \$5,000? A. No. Q. By check or anything else? A. No. Never until I owned the



(Testimony of Isabelle Garwood.)

farm did they talk about scrip, and I didn't know what they meant. Q. This was Saturday evening.

Did you ever meet Mr. Brown in connection with the ranch other than that Saturday evening, that is, before you purchased it, before you got the money?

A. No, only the once. Q. That was the only time?

A. He went home that night. Q. Who was present

at the meeting in the office of the California Colonization Company on that Saturday evening that you thought this over? A. Dyke, Crane, the doctor, Brown and myself. Q. When you began to consider

seriously the purchase of this land, did you ever seek to get them to reduce the price? A. Well, yes, I

told them they ought to give it to me for \$100 an acre because it was wholesale, and they said they could not, it was very cheap at that price. Q. Then what

did you do? A. Then I said, "Won't you get them to take off the grain" and they said they would telephone them about it. Then Monday morning I asked

them if they had spoken about the grain and they said they would not take it off. And then I said, "Well, won't you get them to take off the animals,

I do not want the animals, I only want the land to [153] cut up" and Mr. Dyke said, "Do you suppose

when you pay \$125 an acre for \$600 acres of land, which is exactly \$75,000, do you expect to have an animal thrown in to an acre?" Those were his words. Q. Who said that? A. Dyke. Q. When?

A. On Monday morning, when he said he would not take off the grain. Then I said, "Won't you divide your commission with me because I really can't

(Testimony of Isabelle Garwood.)

spend so much money" but he said, no, he never divided commissions with anybody, he could not do that; and he said, "We are not being paid to sell the animals"; he would not let me have the ranch unless I took them, because the family were going to Europe. Q. Did you ever at any time tell Dr. Ramos to exert himself to get them to cut it down? A. I used to say to give me that money, get them to give it to me, because he said he thought it would be a good purchase, he thought the land would be valuable, and I said, "You get them to take off half the commission, because I must have something," but I did not get anything. Q. Did they ever make any agreement to split the commission with you? A. No, they did not. After they settled with the doctor and left, he said, "You ought to be ashamed of yourself, because you are taking so much of your time, you have had them have the automobile along, and you have taken so much of their time, and the land is valuable, what is the use of doing that? Q. Who said that? A. The doctor. Q. When did he say that? A. On the Monday morning after we talked it over. Q. What did he say, if he said anything at all about cutting this land up? A. He said they were going to cut it up during the Fair and Dyke was going to charge 25 per cent for cutting it up, and the doctor said he would not allow it to be cut up, he would cut it up himself to save money. [154]

Q. What did he say about making any money out of the land?

(Testimony of Isabelle Garwood.)

A. He said I would make three times what I was putting up.

Q. You say that the doctor said this?

A. Dyke said I would make three times what I was putting up, and then the doctor said, "Don't you know, even if you are paying a lot for it you are going to make so much, you are going to make three times as much." Q. The doctor said that afterwards?

A. Yes. Q. Did the doctor say anything to you about buying this land?

A. He said I would make a splendid purchase. Q. How did he put it to you,

about buying this land, that is, for instance, when you and Dr. Ramos were alone?

A. When we were alone? Q. What did he say?

A. He said, "You are going to make three times as much as you paid for it," and he said there would be an income from it, so that I would not lose in the end.

Q. Did I understand you to say a while ago, that he had upbraided you?

A. For finding fault, that there had been so much trouble,—he said he had never in his

life ever seen anyone in selling a piece of land ever

take so much time and so much expense for automobile hire and everything of that kind; he upbraided

me about it and he said I ought to be ashamed to have taken so much time. I remember that. Q. Do you

remember the occasion when you gave them the \$5,000 which you put up as earnest money when you signed the first agreement to purchase the land?

A. Yes. First, they made it \$10,000, but the doctor said \$5,000 was enough. I had not made the check out

(Testimony of Isabelle Garwood.)

yet. Then I wrote the check. Then they scratched it off the contract. I never had the contract, the doctor had it. It was amongst his effects after he died.

Q. At the time you handed over the \$5000 check, did you know anything about any money coming back? A. No, I positively did [155] not; in fact, I never knew that he got anything until after he died. He always told me, to the very last day, that he never got anything. Q. Just explain about the \$5000 coming back? A. What do you mean? Do you mean that they said he got half of it? Q. No, about the \$5000 that one of the Scheiber brothers told you would come back? A. They told me that if I would buy the farm, that because my levee was built—they were going to pay me 11 cents a square foot for it, which would be \$5000. Q. Who was going to pay you that? A. Whoever was building the levees. Because my levee was built, I was to be paid \$5000. I would not have to pay to build it.

Mr. HEWITT.—I would like to know just which \$5000 she is talking about.

The COURT.—I understood her to mean that \$5000 was to be paid at the time they closed the trade for the purchase of the ranch.

The WITNESS.—He was speaking before of that \$5000. That was the \$5000 Mr. Macomber was speaking of.

Mr. MACOMBER.—Q. The \$5,000 I was questioning you at the last was the check you gave at the time

(Testimony of Isabelle Garwood.)

you signed to buy the land. A. Yes, I put up \$5,000.

Q. I am speaking now about Monday, the 25th. A.

Yes, I put up \$5,000 for the land. Q. What month

and what year? A. The 25th of September, 1911.

Q. Where were you when Dr. Ramos handed that check in? A. When I made it I was standing along-

side of the desk in the Colonization office. Crane

and Dike were standing there, and the doctor was

alongside of me, and he picked it up, and I know

nothing more about the check. Q. Did you ever see

the receipt? A. I never knew what became of it.

Q. Was there a receipt given you which said, sub-

ject to the owners' approval, received of Miss I. Gar-

wood \$5,000 for 600 acres of land? A. I don't know

anything [156] about it. All I remember is that

I made out the check for that money, and I don't

know anything more about it. I had perfect con-

fidence in the doctor. He was attending to it. He

took the contract. I never had it. It was amongst

his papers. Q. They never asked you for a check

for \$3500, did they? A. No, never. Q. Did they

or did they not ever make any agreement with you,

or did you ever have any understanding with them

in respect to a division of the commission? A.

Never. I never heard of a division of the commis-

sion. I begged them to give it to me, but they re-

fused; they said they never divided commissions.

Q. And their refusal continued all the time, did it?

A. All the time. They never gave me anything. Q.

And thereafter, if you ever did, when did you ever



(Testimony of Isabelle Garwood.)

get any advice or information as to the fact that the doctor had received some money out of it? A. From Mr. Brown, in the latter part of October. Mr. Brown brought his contract to me three times. He was to be their superintendent for the corporation. And that induced me to buy the farm, too, because it would be so easy. The doctor said, "You will have nothing to do with it, he is the superintendent, you can go to England." They told me that they were all experienced farmers, that they could run the place for me. Then Brown came with the contract to the St. Francis hotel, where I was stopping at that time, and he said to me he wanted me to sign it—

Mr. HEWITT.—Your Honor, I do not understand what this testimony is in answer to. I ask that all of the testimony of the witness on that be stricken out. I would like to have an opportunity to object to these questions. When I object, the witness goes right along. I do not believe it is exactly fair treatment to counsel—I mean from the standpoint of the witness.

The COURT.—The witness must not continue to give her testimony when you arise to make an objection. I feel sure it will not be necessary to repeat that. Now, ask your question. [157]

Mr. MACOMBER.—Q. Miss Garwood, do not digress so much; just answer the question direct. A. It was when he brought me the contract to sign. Q. What did he say? A. He said, "How much did you pay?" I said, "I paid just what they asked

(Testimony of Isabelle Garwood.)

me, \$75,000 for the farm, and \$21,609 for the animals." He said, "Didn't you get any commission out of it?" I said, "No, of course not." He said, "Did anybody else?" I said, "Why, no, nobody." He asked me that each time he came. Finally the third time he said, "Are you sure you didn't get any," and I said, "No, I did not." He said, "Did the doctor?" I said, "Certainly not." He said, "Do you know that he did not?" I said, "Of course I know that he did not." He said "Somebody did." I said, "You mean to say that he did?" and he said, "Yes." I said, "I will prove that he did not, I will telegraph for him to come here." Q. Where did he say he received any commission? A. He said that Dike had told him he had given it to him. I telegraphed the doctor to come, and he came. He got there the following morning—

Mr. HEWITT.—We object to this as immaterial, irrelevant and incompetent.

The COURT.—I don't know whether any of the testimony in reference to that matter would be admissible, I cannot tell until after all the testimony is in. They will have to show that there was bad faith and fraud practiced by the doctor, and that she was deceived by her agent; in other words, the allegations of the complaint will have to be established. Proceed. I will overrule the objection for the present.

Mr. MACOMBER.—Q. Did Mr. Brown state to you why he came to you with his troubles? A. He

(Testimony of Isabelle Garwood.)

Q. (Intg.) Why was he concerned in the matter at all? A. He said, "I don't know what your arrangement with the doctor is, or what your connection with the doctor is, [158] but he got the commission." I said, "I don't believe it, and could not believe it, and I will make him prove it if he did." I said, "If it is so, I will not marry him, and then"—

The COURT.—That testimony will be excluded. You can make proof that she was informed that somebody got the commission, and that thereupon she investigated it. All the conversation between the witness and Mr. Brown in the absence of the defendant is not admissible, and I will sustain the objection.

Mr. MACOMBER.—But as to what was said by Dr. Ramos will be admitted, will it?

The COURT.—I will admit that subject to the defendants' objection.

Mr. MACOMBER.—Q. When Dr. Ramos arrived, state what happened. He was very indignant. I said, "Do you know that Mr. Brown accuses you of having received a commission?" He said, "What, and you sat and listened to him, you should have kicked him out of the house; would I listen to anybody say anything against you?" I said, "I did; I telegraphed to you immediately to come and say it was not so." I said, "He is coming here at three o'clock this afternoon, to hear the truth." I was very indignant with him. He said, "Now, I remember"; he said, "Do you remember what Crane said,

(Testimony of Isabelle Garwood.)

that I would make a fine agent, and that if I made sales for him he would give me a commission; maybe he will, but I have not heard of it. Now that is the truth."

Q. At the time the formal contract was signed, do you remember an occasion of your being in Mr. White's office in company with Dr. Ramos and Mr. Dike and the Scheiber brothers? A. Yes, sir. Q. When was that with reference to the date you paid the money? A. It was on the 27th day of September." [159]

Q. That would be two days subsequent to the time you paid the \$5000? A. Yes, sir. Q. Who all were present at that meeting? A. The Scheibers, the doctor, Mr. Dike, Mr. White and myself. Q. The three Scheiber brothers, you say, were there. Which do you mean? A. The men I bought the ranch of. Q. Are you sure that all three were there? A. I think there were all three there. Mr. White said the other day he thought there were only two there. I think they were all there.

Q. You know that some of them were there, do you? A. Yes, sir. Q. Do you remember the occasion of Mr. White reading this agreement? A. Yes, Mr. White read the agreement. He read, "600 acres, more or less." I had never heard anyone use that expression before. I never heard that expression before in my life. I beat on the table to attract attention, and I said, "Stop right there, Mr. White, I never agreed to buy 600 acres more or less, I agreed

(Testimony of Isabelle Garwood.)

to buy 600 acres of the finest alfalfa land in the state for \$125 an acre." He very deliberately stood up, turned his back, put a book on the shelf and faced me and said, "Miss Garwood, it means 600 acres, that is only a law term"; and I signed it, thinking he was my lawyer.

Q. Are you sure that is the truth? A. I swear to it. Those are the very words. Q. Did any of the Scheiber brothers dissent from that? A. Nobody spoke at all, nobody said a word. Q. And you are sure of that? A. Yes.

Q. And that is all that was said about "more or less"? A. That is all that was said. Q. In reference to the personal property, you bought personal property at this time, as well as the land, did you? A. Yes, everything. Q. How came you to buy the personal property? A. Mr. Dike said, and they told me themselves, they were going to Europe, they were tired of [160] work and were worn out, and they wanted to go back to Europe and live there; and they asked me if I thought their wives—

Q. (Intg.) Now, that is all right, you are digressing. I am speaking about the personal property. A. I said, "Why do I have to take the animals?" They said, "Well, we wouldn't know what to do with the animals after the land was sold, they have to go with it." I supposed that was true. They would have no place to put them after the land was gone. Q. When did that conversation take place? A. That conversation took place on the ranch the first day I was there. Then Dike told me always that they



(Testimony of Isabelle Garwood.)

would not sell the ranch unless the animals were sold, too, because they were going to live in Europe, that they were worn out and tired of work. Q. And you had to buy the animals? A. I had to buy everything. Q. You had to buy the personal property or you could not buy the land. Do you remember what you paid for the personal property? A. \$21,609. Ramos lived until the 29th day of May, 1912. At the time of this transaction he was not sick as far as I know. He was 53 years of age, he was large and fine looking, he was highly educated, very cultivated. He had been an officer in the English Army before he was a doctor. He graduated from the New York University, from Boston—from Harvard. He was with Dr. Loomis as a post graduate in the hospital in New York. I had perfect confidence in Dr. Ramos. I never before had any occasion to mistrust him. I never mistrusted him in my life. I had never had any experience in buying farm lands; I never saw a farm before in my life, and I had never seen animals before, except, perhaps, in railroad cars, and as I passed along the road. I had only been in California for a week or so just before. I arrived in San Francisco about the 14th of September, but I am not sure. I sprained my ankle the day after I [161] saw Dike, then I went back to San Francisco and was in bed in the hotel. My ankle had been set in Sacramento, then I had it set again just before I went out to Sacramento to meet the doctor. I could not walk on it, I just hobbled on it. It was in the early part of February, 1912, that I

(Testimony of Isabelle Garwood.)

was told that there was only 450 acres to the place. Since purchasing this land, I have paid reclamation assessments for keeping the water off the land. I paid \$16,104, in February, 1913, and I have to pay \$10,000 more. On that \$16,000, I was credited with \$5,000, but when they promised me the \$5,000, I thought they were going to give me money; I was very much surprised when I found it was scrip. I could not pay the \$11,000 right away, and I let it go until the following December, and had to pay \$700 extra, and now on April 1st they charged me \$10,000 more.

The document marked Defendants' Exhibit "E" for identification was introduced by plaintiff and marked "Plaintiff's Exhibit 4."

Mr. MACOMBER.—Q. Now, Miss Garwood, with reference to any representations which the defendants made concerning this land, did they ever give you a circular? A. They gave me that book you have in your hand. Q. Do you recognize this book? (Addressing counsel.) This is the circular. (Handling.)

Mr. HEWITT.—I understood that your Honor ruled that that was not competent. I understand that it is a prospectus gotten up by real estate people. That matter was up the other day.

The COURT.—I do not think that that is such a representation that would be binding upon the defendant, unless you show they authorized it to be inserted as it is there inserted, or that they knew that

(Testimony of Isabelle Garwood.)

it had been so inserted and published to the world. I will admit it subject to objection, and if the plaintiff does not bring herself within the rule I will exclude it. [162]

Mr. MACOMBER.—Shall I read this into the record or shall I let the reporter copy it into the record?

The WITNESS.—They gave it to me before I bought the land; when I was talking about buying the land they gave me that.

The COURT.—Q. Who do you mean by “they”? A. I mean Dike. He gave it to me to identify the land that they wanted me to buy.

Mr. MACOMBER.—What does it say about the land?

The COURT.—Don’t stop to read it. Just introduce it. A. It represents 600 acres of subirrigated land in Sutter County.

Q. Is that what they gave you? A. The soil is deep.

The COURT.—I will have to read it anyway. No use of the witness taking the time to read it. It may be marked as an exhibit. (The circular introduced in evidence and marked, “Plaintiff’s Exhibit 5.”)

Mr. MACOMBER.—Q. Now, Miss Garwood, what representations were made to you, what was said to you, rather, at any time, by Dr. Ramos, or Mr. Dyke or Mr. Brown or Mr. Crane, in reference to the stock, personal property on the land? A. Why, they were going to take it over as a corporation. Q. We won’t go into that. What did they say? A. They said that it was all first-class. I was only on the ranch

(Testimony of Isabelle Garwood.)

once prior to the day I paid the earnest money. The only time that I was on the ranch was the 21st day of September, 1911. The next time I was on the place was the 31st day of October, the day before I paid the money; we went up to look at the animals, and one of the Scheibers met us with a carriage and we drove to the stacks, and then Mr. Dyke measured them off, Mr. Dyke and Mr. Scheiber." On that trip Mr. Dike, Dr. Ramos and myself made up the party. we went by rail, and Mr. Scheiber met us at Nicolaus and drove us [163] over to the stacks and Mr. Scheiber and Mr. Dike measured them and then they drove us over to the old barn. Mr. Scheiber drove me and the others walked and when we crossed the road there was a big slough there, and I said, "Well, Mr. Scheiber, you told me there was nothing bad about the farm."

Q. We are getting away from the question. We do not care anything about that. Just confine yourself to the questions that I propound to you.

The COURT.—I would like to know what he said about that, for my own information.

A. I said, "Why, you said there was nothing bad about the farm, look at this big hole, there is another big hole near the house." He said, "that is a hole we had to dig for the animals, and this slough, we have to have sloughs"—by the time he finished saying that we were in the alfalfa field where the horse barn is and he said, "it is all good clear level land like you are looking at," the same remark as he made the first day I looked at the farm from the porch.



(Testimony of Isabelle Garwood.)

Q. Who measured out the alfalfa? A. Mr. Dike and Mr. Scheiber. Q. What did you and Dr. Ramos do? A. I was alone in the carriage when they measured it.

Q. Where was Dr. Ramos? A. He was out with the men; there might have been two or three of the Scheibers there. I think Morris had gone to the head of the horses.

Q. What else was done about the animals? A. When we reached the old barn they drove out some of the horses and of course I was no judge of horses at all, there was one horse standing on the bank and I said "Aren't you afraid he will fall down that embankment into the water" and they laughed.

Q. What did the Scheiber Brothers say to you if anything in respect to the land being capable of raising alfalfa without any irrigation? A. I asked them if they needed any irrigation and they said no. [164]

Q. Who said that? A. Morris Scheiber.

Q. What did Mr. Dyke say or Mr. Crane or Mr. Brown at the office on that Saturday evening about that?

A. They said it was all the best alfalfa land in the state and needed no irrigation and they said there would be no assessments. I thought they meant a road, because they were going to cut a small road through there; I thought they meant I would have to pay for the road—they said no, there was no assessments. I didn't know there was no water—I didn't know I would ever be assessed for water.



(Testimony of Isabelle Garwood.)

After I had served them with a notice offering to rescind, I was served in turn by them on March 12, 1912, with a written refusal to rescind. (Defendants' written notice of refusal to rescind was at this point admitted in evidence, marked, "Plaintiff's Exhibit 6.") The first time I had ever been upon the levee was at a time after I learned that there was land outside of the levee. That was in February, 1912. That was the first time I knew there was land outside. Mr. White first spoke to me about the levee sometime after the first of December, 1911. He said, "There may be something about the levee, they may scoop out on the outside, and it takes five years to fill in." That was the first time he ever mentioned the levee. He never mentioned the money. I told him I was going to get \$5,000 back and he said, "I don't know anything about it, I thought it was one thousand." He met me in the street, and he said, "You are going to get \$5,000." That must have been the latter part of November, after I bought the farm. At the time of commencing this action I was a citizen of the State of New York. I believed implicitly every word that they said and what they said was exactly what they showed me in their book, and I believed everything, otherwise I would not have bought the place. Dr. Ramos and Mr. Crane were very chummy, they said they liked each other very much. They spent a portion of [165] their time in the bar opposite the hotel. I used to see them going there. I saw them go in and out of the bar, and the Doctor told me they had

(Testimony of Isabelle Garwood.)

been in the bar. The Doctor told me to keep away from that realty office. Not before I bought the farm, but after I bought the farm, the Doctor said to me, "Never go into that office, those are common men, and don't you ever go in." He told me that repeatedly. I have never been engaged in business in my life of any character whatsoever.

Cross-examination.

I first learned of the \$5,000, which I was to be allowed on account of the old levee, before I bought the farm, that was one reason why I bought it. I first learned of it the day I went to see the farm. Even before I went to the farm, Dike told me I would get \$5,000 back, making my indebtedness \$35,000, instead of \$40,000, that was on the way to the farm. He said, "You will get \$5,000, back for the levee, because it is built." He said, "You have nothing to do, nothing to pay, and you get \$5,000 back." At that time I had never had any experience at all in land matters, or any business; I knew nothing about land, or business. I knew he was telling me that I would get \$5,000 back, and that satisfied me that I was making a better bargain if I got \$5,000 back, than if I got nothing. I was positive I was going to get \$5,000 in cash. He told me that on the way to the ranch, and the Scheibers told me on their porch. At the ranch-house one of the Scheiber brothers said to me, "If you buy the ranch, you get \$5,000 back, and you pay nothing out." They said that it was because the levee was built. The other

(Testimony of Isabelle Garwood.)

people have to build the levee, and you get your \$5,000 back and pay nothing out. He did not say any rate that was to be paid, he said I would get the \$5,000 back. He didn't say so much a square foot, or so much a square yard, but only I would get the [166] \$5,000 back, because my levee was built. I supposed the money was coming from the people who were going to make the other people build levees. I never heard of a reclamation district in my life before that, and I did not hear of it then either. If he had mentioned a reclamation district, I would have asked him what he meant. He said I will get the \$5,000 back, because my levee was built. I was not curious to know who was to pay it, I only believed everybody who talked to me. Q. You are quite positive that was the first time you went to the ranch? A. I am positive that I was never on the ranch but once before I took the animals away, and that was the time before. Q. That was the day they told you? A. Yes. Q. Are you as sure of that as you are of other things you have testified to. A. I am as sure of that as I am that I am alive. Q. \$5,000 was of some importance was it not. A. Yes it was. Q. It was then? A. Yes, it was then. Q. Was there something said to you by somebody about that time about an allowance for a road? A. They said they had sold my land for a road and I would get money for that, \$250. Q. Who said that, do you remember? A. The Scheibers; I think Morris was the spokesman. Q. At the ranch on this first occasion? A. On that first visit. Q. Now,

(Testimony of Isabelle Garwood.)

what did they say about who should stand the assessments or how the taxes should be divided and what you should pay and what they should pay, and what the Scheibers should pay, on the porch? A. They never spoke about assessments, they did not speak about taxes. Q. Did they speak about taxes? A. No. Q. Did not speak about taxes? A. No. Q. You don't recall anything they said about the taxes? A. No. Q. Is it not a fact that [167] they represented to you if you bought the property that it should be free from taxes or assessments except— A. No. Q. Just a moment—except the taxes for the year 1911 would be prorated, they standing two-thirds and you one-third of those taxes? A. That was when I bought, they paid me back a part, they paid back \$30; that is always the way when you buy property, you only own from the time you buy it. Q. I will ask you what was agreed to on this particular occasion? A. I am telling you. They said I would get \$5,000 back and pay nothing out, and I don't remember anything else. Q. You don't remember anything about the taxes? A. No. Q. Nor what proportion of the taxes you were to pay? A. No, I had no thought of buying the farm then, they were simply inducing me to buy it. Q. The day you made your agreement to buy it, was anything said about what your share of the taxes would be? A. The agreement was afterwards; we are talking about the first visit. Q. I say the day of the agreement. A. The day the agreement was made it was agreed that I was to get \$30 back for back taxes.

(Testimony of Isabelle Garwood.)

Q. \$30. I was to pay the future taxes and get the back taxes. They handed me \$30. Q. That was the date of the deed, was it not? A. It was understood when the agreement was made what they were to be.

Q. Then at the time the agreement was executed in Mr. White's office, there was something said about your getting back taxes, was there not? A. You

were speaking about the first visit to the farm. You asked if there was anything said. Q. No, at the time that was executed?

A. In Mr. White's office, yes; I did not understand the question. Q. What was said about the taxes at that time?

A. I would get back for the time that had elapsed before I bought the farm. Q. In what event were you to get this

back? A. In case I bought it. [168] Q. Was it

not understood that the taxes for the year 1911 were to be apportioned, you to pay one-third of the taxes and the Scheibers two-thirds of the taxes for that

year? A. Yes, I was to pay for the parts that I would have. Q. If you did pay all the taxes they

would rebate to you their share? A. I don't know enough about business to know. Yes, the property

was subject to a first mortgage of \$19,500, and a second mortgage of \$20,000. Yes, I certainly did

know that I was to get \$5,000 back, and I knew that before I made any deposits at all on that property.

Dr. Ramos knew it, everybody knew it, it was told in public. They said it would come back to me, but

they did not say when. Q. Why wasn't it in your contract that was made in Mr. White's office? A.

The \$5,000 was to be paid, they said it would come



(Testimony of Isabelle Garwood.)

back to me but they did not say when; they said it would come back to me, you will get \$5,000 back, because your levee is built. Q. You signed a contract to pay \$35,000 for the ranch and it don't mention a word about the \$5,000? A. They told me it was coming back. Q. You did not ask to put it in writing? A. I am not a business woman. Q. You had Dr. Ramos there? A. Dr. Ramos, it appears, was not on my side. Q. And the \$5,000 was an important item to you? A. A very important item to me. I believed their word, it was coming back to me. Q. Was there or was there not, in the contract dated September 27, 1911, anything about that \$5,000? A. I don't know. Q. You don't know? A. I don't know; I know only I bought it because they told me I would get—\$5,000 was coming back to me; Mr. Dyke told me; he was the agent who sold it to me; he told me "You will get \$5,000 back because your levee is built." Q. Now, Miss Garwood, isn't the first time you heard about that \$5,000 the time that Mr. White told you about it? A. No, sir. Mr. White never spoke to me about it until I spoke to him long afterwards. [169] Q. You did know about it before? A. I knew it about the first day I went on the farm, before I reached the farm; it was one of the inducements to buy it. Q. Now on the 25th of September, 1911, you concluded to buy this property, didn't you? A. Dr. Ramos said he thought it was the best thing to buy, and accept the pay in full price and I said, "All right, if you think so."

(Testimony of Isabelle Garwood.)

Q. Did you at that time conclude to accept, pay the full price? A. I did pay the full price. Q. Did you at that time conclude to pay the full price?

A. Yes, on the 25th of September. Q. On the 25th of September? A. Yes. Q. Provided was it not,

that the California Colonization Company could not get it for less? A. I had not said I would buy it before they said they could not get it for less.

Q. Miss Garwood, when you gave them the \$5,000 on the 25th of September, 1911, was it not with the understanding— A. (Intg.) That was after they refused—

Q. (Intg.) Pardon me will you please, Miss Garwood; was it not with the understanding that they were to try to get the purchase price reduced, even then? A. No. Q. It was not? A. No.

Q. Was it not with the understanding that they should try to have the hay on the ranch included in the purchase price? A. No. Q. It was not? A.

No. Q. You are positive of that? A. Positively

no. Q. How much did you pay them on the 25th of September? A. I paid \$5,000. Q. When did you pay them the next \$5,000? A. I never paid them

\$5,000 more. Q. On the next day weren't you to have paid \$5,00 more? A. No. Q. On the next day

did you pay them \$5,000 more? A. No. Q. Didn't you back \$5,000 that you paid them on the 26th of September, 1911? A. No. When the contract was

made that first day, on the 25th of September, they said [170] "Make it out \$10,000" and I wrote it out \$10,000, and then the doctor said, "don't give them that \$10,000, Dyke may steal half of it, you

(Testimony of Isabelle Garwood.)

make it \$5,000, \$5,000 is sufficient; don't give them but a check for \$5,000; I am not willing for you to give them \$10,000," and then I made it \$5,000.

Q. Did you on the following day write out a check for \$5,000 and hand it to them. A. They gave me the other check back. Q. They gave you the ten-

thousand dollar check back? A. It was already drawn up. Q. Are you positive about that? A. I

am positive I paid only \$5,000. Q. I am not asking

you that; I am asking you if you did not give them \$5,000 on the next day? A. If I gave them a ten-

thousand dollar check I got it back when I gave the five thousand dollar check; the doctor objected to

my paying \$10,000, he said they had no business to ask me for \$10,000, and I took that back and paid

\$5,000. Q. You are quite sure of that point? A.

I mentioned that the other day. Q. I will ask you

again, didn't you on the 25th day of September pay

them \$5,000 and didn't you on the subsequent day,

the 26th day of September pay them \$5,000 more,

and didn't they on the 27th day of September, return

one of those five thousand dollar checks? A. They

returned a check which I tore up, but I never paid

them but \$5,000; the first check was made out for

\$10,000. Q. Can't I get an answer to that question?

A. I have answered it. The first check was made

out for \$10,000. The doctor refused, he said they

had no right to \$10,000. He said, "Dyke may steal

part of it or steal all of it, it is such a large sum, only

give him a check for \$5,000," which I did. The

check was made out at the time. Q. Will you say

(Testimony of Isabelle Garwood.)

now that you ever gave them one check for \$10,000?

A. I say that the first day they asked me for \$10,000, and it was written at the bottom of the contract \$5,000 returned.” [171] Q. You know that?

A. \$5,000 returned and \$5,000 accepted. Q. How did you know that? A. I saw it written at the bot-

tom of the contract. Q. Did you first give them a check for \$5,000 on the 25th of September and no more? A. If I had given them a check for \$5,000

I never would have increased it to \$10,000, if the check was \$5,000. Q. Didn't you on the 26th of

September, the following day, give them a check for \$5,000 more? A. No, I did not, unless I got the first check back. The first check was for \$10,000 and the

second check was \$5,000. Q. Didn't you finally on the 27th of September get that last check? A. No,

the 27th of September the check was handed in at Mr. White's office \$5,000. Q. I show you a docu-

ment, Miss Garwood, marked Defendants' Exhibit “B” for identification dated “Sacramento, Cal., September 25, 1911” and call your attention par-

ticularly to the bottom; is that the memorandum, that is, a part of it scratched off, that you are speak-

ing about? A. Well, I did not pay it; I was to pay \$5,000 probably the next day but did not. The

doctor said \$5,000 was sufficient, “Don't give any more.” Q. Pardon me. Will you answer my ques-

tion which was that the memorandum on which you say that the receipt for the \$5,000 was scratched off at the bottom of the contract—is that the contract?

A. I don't know whether it is or not. How do I



(Testimony of Isabelle Garwood.)

know. Q. You say you saw the document? A. I could not tell you; it is four years ago; I never expected to see it again in my life. The doctor said "they have demanded too much money, don't give them that." Q. Is that your signature at the bottom of that contract? A. I do not see my name there. You mean of that? Q. Yes. A. That is mine.

Q. Examine the document? That is my signature.

Q. Is that the contract, where you see at the bottom of it— A. I saw that they had written something, I did not read it. I know I only gave them \$5,000.

[172] Q. Then you did not read what they had on the bottom of the contract? A. I suppose I did at the time, I don't remember; I know I gave them \$5,000 and they wanted \$10,000, and the doctor said, "Don't give them \$10,000; give them \$5,000; "Dyke will run away with it; don't give but \$5,000"; "I never gave but \$5,000." Q. Didn't you say that you saw Mr. Dyke scratch off "receipt" at the bottom after the check was returned, the five thousand dollar check was returned to you? A. I remember I only paid \$5,000; you cannot tax me any closer than that. It is four years ago, and I never expected anything to come back. I thought I was buying in good faith. Q. When did you sign that document? A. I don't know; I signed it and went away and told them I would not give them any more money. Q. Did you sign it when you gave them \$5,000? A. It must have been when I gave the \$5,000. I don't remember altogether about the receipt. (Defendants' Exhibit "B" for Identification.) It has



(Testimony of Isabelle Garwood.)

something scratched off at the bottom. What I do know is the Doctor took all the papers, I never looked at them. I know they wrote something at the bottom of the paper. I know positively that they first wanted \$10,000, and it was finally decided I would pay them \$5,000 which I paid them on deposit, and that is all they ever had until the final money was paid. I remember there was something scratched on the bottom, but I never read it or paid any attention to it. I think that was the paper that was found among the Doctor's effects after he died. I never had it. He had it in his possession. I know I paid them \$5,000. They wanted \$10,000. That really was not money, it was simply put there as money, but the money was in New York. First, I was going to give them a check for \$10,000 which I probably did, and afterwards it was changed [173] to \$5,000, because the doctor said not to trust them with \$10,000; he said he did not think Mr. Dike was honest; if he got too much money he might disappear. I have told you over and over again I don't know what kind of check was returned to me on the 27th. I know I paid \$5,000 only. If the check was returned to me it was torn up.

(At this point Defendants' receipt introduced in evidence, marked, Defendants' Exhibit "B.")

Mr. MILLER.—Q. Now, Miss Garwood, after examining this receipt, I will ask you whether or not you desire to make any correction in your statement that you did not request the California Colonization Company to try to secure this property for less than \$75,000 for you? A. Before I bought the property,

(Testimony of Isabelle Garwood.)

I tried very hard to get them to take less. Q. Now, on the 25th of September, 1911, when you deposited the first \$5,000, didn't they give you a receipt in which it was stated they were to secure it for less if they could secure it for less? A. That might have been, I don't remember, but I wanted it as cheap as I could get it. That is all I know about it, and I tried in every way to get it. Q. Didn't you also at the same time try to get them to include the hay on the ranch? A. I was only going to buy it providing they got it cheaper. I tried to get the animals off if I could, and I tried to get them to take the hay off, if I could. Q. I call your attention to the first paragraph of this receipt. "Received from Miss I. Garwood the sum of \$5,000, being deposit and partial payment of the total sum of \$75,000, or as much less as can be secured, as the purchase price of the following-described property—600 acres, more or less, situated on the east side of the Feather River in Sutter County, about 11½ miles south of Nicolaus, and known as the Scheiber Brothers ranch," and then written just in the division there, in connection with the same, "Price includes hay on ranch." Was that part of the understanding? [174] A. Price includes the hay on ranch. I paid \$3,000 for the hay on the ranch. Q. This is dated September 25, before you made and payment. You wanted them to include the hay on the ranch? A. I wanted them to include the hay on the ranch. The document was read over to me. Mr. White's office was a small room. The room was about 11 feet wide and 20 feet long. On the right-hand side as you entered, there

(Testimony of Isabelle Garwood.)

was a large safe. On the right-hand wall, beyond the safe was a bookcase containing a number of volumes; I think that is correct. I do not know whether the books extended clear to the east wall of the room. There was a bookcase at my left on the other side of the room. When I went into the room I faced Mr. White's desk, which was at the extreme end of the room. Mr. White usually sat back of his desk next to the window, facing me. That was his position. The desk was between myself and Mr. White, yes. The others were sitting with me. Mr. Dike was walking back to the window, yes. Possibly Mr. White's desk was about  $5\frac{1}{2}$  feet long, and about 3 feet wide, and covered with documents and books and papers. No, sir, Mr. White did not pick up a book that was in the way, so that I could sit at the desk and sign the document. Mr. White may have said that he didn't know the land; that it was in a good neighborhood, that alfalfa was a good thing in California; I don't know. I stopped the reading of that in the beginning when he said more or less. I said, "Stop right there Mr. White," then I said, "I never agreed to buy more or less, it was 600 acres of the finest alfalfa land in the State at \$125 an acre." Then he picked up the book and turned deliberately and put it in the shelf and turned around again and said, "Miss Garwood, it means 600 acres, that is only a law term." That is all he said about it. Further on it read "free from all encumbrances." I heard the document when he read it. [175] I have never read the document. I heard the words "free from all encumbrances" at that time, and not since; I have

(Testimony of Isabelle Garwood.)

never read the document at all. I am sure it said "free from all encumbrances." I would not have gone ahead with it had he said it meant 600 acres more or less. I am sure I would have thrown up the bargain that day. The original receipt, which I signed, says 600 acres more or less. That original one I did not read, but when I heard him read it I stopped him. Mr. White did not tell me that 600 acres more or less meant that whatever that ranch was. His words were "that the 600 acres more or less was simply a law term." Mr. White did not tell me that 600 acres more or less meant that if the ranch contained more than 600 acres, I would get all that it was, and if it contained less, I would get all that it was. He did not tell me that. The only thing Mr. White said was that 600 more or less was simply a law term—that it meant 600 acres. Yes, my educated friend, Dr. Ramos, Mr. Dike and the three Scheiber brothers were all there, and heard Mr. White make that explanation of the words "600 acres more or less." Yes, they were all there. Nobody said anything. He said 600 acres more or less was simply a law term. Yes, I heard it read that a strip of land 40 feet in width was to be taken for the purpose of a road, and it was understood that I accepted the land subject thereto, and that I was to receive \$250 for that. Yes, I accepted that. I did not say anything at that time about the \$5,000 for the levee. The Scheibers told me about the road in advance, the same as they had told me I would get the \$5,000. In my direct examination I did not say



(Testimony of Isabelle Garwood.)

anything about any district at all. They said, "If you buy that land, you get \$5,000 back, because your levee is built." I never said anything about a road district. I never heard anything about a road district at all. I never inquired where I was to get that [176] money back from, because my levee was built they told me and I did not need to inquire. Mr. Scammell was the first one to tell me that the land was in the reclamation district. I had a letter from Mr. White telling me the time was not perfect, and I wrote him I would not take the land, I did not want the land at all; then he wrote me about perfecting the title. He told me the title was not perfect, and I wrote back and told him I did not want the land. I don't know whether he sent me an opinion of title or not. They did not mention the mortgage or taxes that day; that was mentioned in the agreement. Mr. Dike told me the first night I talked about buying the property that there would be no assessments. The first time I went on the property I was not interested in it at all. Q. By the way, when you went upon the ranch the first time, were you interested? A. Not at all. Q. You did not pay any particular attention to it? A. I did not want it because it had animals on it, but they wanted to show it to me because it was such excellent land for cutting up, 600 acres. Q. You say you was not interested? A. I was not interested, no. Q. You did not pay much attention to it? A. I had no more idea of buying it than I had of flying when I left the ranch. Q. You went up on the ranch, and you met one or



(Testimony of Isabelle Garwood.)

two of the Scheiber boys and their wives? A. Yes. Q. And you had some conversation with someone there? A. Yes. Q. In reference to the ranch? A. Yes. Q. You asked them to point out the boundaries? A. Yes. Q. What did they say? A. They said right along the green line to the white house, meaning their stable, running down that line to the trees and across from the trees up to the grove. Q. Across the trees to— A. (Intg.) The trees at the boundary—from that fence to the grove. Q. What did they say about what [177] river it was, if any? A. They never mentioned a river. Q. They did not say whether it was the Sacramento River or the Feather River? A. They never said a word about it. Q. Didn't they say along that green line, along the Feather River? A. No, they said the green line. I didn't know anything about that. Q. What was the green line—the green line was the trees, was it not? A. The green was right along—it was the green line right along—you could see it from the fence. Q. Do you mean to tell me the levee was green, that it had any trees on it at that time? A. The trees were back of the levee, just the same as I had seen them on the Sacramento River the day before. Q. Was there a river there? A. I thought it was the Sacramento River at the time. Q. You thought at that time? A. I thought it was the Sacramento River. Q. Then you knew there was a river there? A. I said I thought it was the same river that I was on the day before. Q. How did you know there was a river there? A. Because they told me

(Testimony of Isabelle Garwood.)

it was a levee, and I thought the levee was along the river. I never knew a levee was along land. Q.

How did you know that there was a river there?

A. Because they told me it was along the river—they told me it was a farm of subirrigated land along the river. Q.

When they pointed out the boundaries, they told you “that green line over there,” and they pointed in the direction of the levee? A. In the direction of the levee. Q.

And the green line was trees beyond the levee? A. I took it that they were trees on the slope of the levee, the same as I had seen the day before, going down the river. Q.

According to your statement, you said they pointed out a green line. A. They pointed out a green line and then they afterwards said, “Don’t you see it rises up there, along there, the green line, it rises”; then I knew the levee ran up apparently right to that stable of theirs. They asked me [178] to buy the other 140 acres— Q. (Intg.) Did they ask you to go upon the levee? A. No, there was nothing said about that. Q.

Mr. Dike asked you to go upon the levee. A. Mr. Dike asked, in passing, would I walk up and look around the country, and I said no, I wanted to go to the ranch, I could not walk up the hill, on account of my ankle. Q.

Mr. Dike, are you sure he used the words “around the country”? A. In the first place, I didn’t understand his question altogether, it was simply, “Would you like to take a walk up and look around,” that is what it amounted to, and I said, “No, I want to see the farm,” and I said, “My ankle is too sore, I could not

(Testimony of Isabelle Garwood.)

walk up a hill." Q. Then he did invite you to go up on the levee? A. No, only in a general way, passing.

Q. How close were you to the levee at that time? A. We were *coming the angle* into the farm.

Q. You were within 20 or 30 feet of it, were you not?

A. Yes. It was steep, and he knew I could hardly step on my ankle, on my foot.

Q. You had been going into his office, had you not? A. I had been limping over, but that was not walking up a steep hill,

and my ankle was very sore. Q. Now, you went there, and upon finding the stock, you were not interested, you say?

A. I never saw the stock. Q. When you found that there was stock there, you were not interested, you say, in the ranch?

A. I was not interested. The doctor said, "We will go and look at it, it is good land to cut up, that is the main thing."

Q. In spite of that fact, you made some inquiries about the boundaries of the land from them?

A. I wanted to entertain them, they sat there and said nothing to me, and I was left there, and I said, "Where is this land"?

Q. You saw some alfalfa there, didn't you? A. Why, in the distance, yes.

Q. How far? A. Not near the house, over in the field toward the levee.

Q. How far from the house? A. Well, I should [179] think it must have been around the pig sties.

Q. About how far from the house where you were seated? A. I could not judge very well, it might have been a quarter of a mile; it certainly would be away up beyond the farm.

Q. By the way, from where you were sitting when you were talking about the descrip-

(Testimony of Isabelle Garwood.)

tion of the land, it was a half a mile to the land that you spoke of, was it not? A. I should judge so, I am no judge of land.

Q. It was quite a good distance away, was it not? A. Yes, I think it was.

Q. Hadn't you been along that alfalfa? A. No, we drove in through the woods, through the grove,

through the pig-sty. Q. But you could see the alfalfa? A. Well, we drove along some alfalfa.

Q. You said to one of the Schieber boys, whichever one was there, "How many acres of alfalfa have you got"? A. No. After I bought the land, on the 4th of December, I asked Mr. Scheiber, when I was riding in the carriage to the depot— Q. (Intg.)

The witness is not answering the question. I did not ask you that, Miss Garwood. A. I did not. I did not ask how many.

Q. Miss Garwood, you have so far testified many times as to the number of acres that were represented to you as planted to alfalfa.

In your complaint, you have sworn it was represented to you as 250 acres. As yet, you have not said who represented to you that there were 250 acres. A.

Mr. Dike told me that there were 250 acres. The Scheibers that day that we were there, not when they were talking to me on the porch, but they told the doctor there were 250 acres, but 50 acres had been washed out when the levee broke. Q. And there were 200 acres left?

A. 200 acres of alfalfa left.

Q. Was that on the first day you were up there?

A. Yes. Q. Then you asked them in reference to the alfalfa, "Is the alfalfa all the same as what I see here"? A. No.

Q. And they said practically—



(Testimony of Isabelle Garwood.)

A. (Intg.) No, I did not ask him. Q. You did not [180] ask him? A. I said, "You told me all the good things about the land—" Q. (Intg.) I beg your pardon, the first day I am talking about. A. I never asked them that, no. Q. The first day? A. I asked them the character of the land. Q. Didn't you, the first day, ask how many acres there were in alfalfa? A. No, I said, "What kind of land is this?" And they said, "First-class alfalfa land." Then they told me further about the land. Q. How did the conversation come up, in which they said there had been 250 acres in alfalfa and 50 acres had washed out? A. They told the doctor that 50 acres had washed out, and they told Dike when there was a break in the levee. Q. How did that conversation come up? A. I don't know, I was not listening. They were not talking to me. Most of the time when I came around they stopped talking business, and talked about going to Europe with their wives. Q. Where were they going? A. To Europe, going to live in Switzerland. They were tired of working. Q. You said in your direct examination that they said they were going to Germany. A. Germany or Switzerland. They asked me if I spoke any German, their wives were of German descent, they were going to live abroad. Q. Did they at that time tell the doctor and Mr. Dike in your presence that there were 250 acres originally, but that 50 acres had washed out? A. They said that 50 acres washed out when the levee broke once. Q. They did not represent there were more than 200 acres then? A. No.



(Testimony of Isabelle Garwood.)

I understood there was only 200 acres when I bought it. Dike told me that before I bought it. Q. In speaking of alfalfa with the boys, didn't you say, "Is all of the alfalfa like this"? A. No. I said, "Is all of the land"—they told me all the good things about the land, and I said, "Now, you have told me all the good things about the land, is there anything [181] bad about it?" and they said, "There is nothing bad about the land, Miss Garwood, it is all good, clear, level land like you are looking at." Q. This was in a conversation that occurred in October? A. No, the same conversation occurred before; they repeated this in October as I told you before—they repeated this in October—in October they were in the old barn, old horse field where the old barn was and they said that this was all good, clear, level land like you are looking at. Q. What brought about this conversation on the 21st of September, 1911, in which you said to them, "You have told me all the good things about the place, now tell me if there are any bad things?" A. I was trying to entertain them, and I said, "Where is this land?" Then I said, "What kind of land is it?" They said, "It is all good, level land"; then they told me everything that was good about it, and I said, "Now, you have told me lots of good things about this land, what is there bad about it?" and they said, "There is nothing bad about it, it is all good, clear land like you are looking at." Q. I will show you the original complaint in this action, No. 15,701, marked "Filed October 11, 1913," and containing a verification signed

(Testimony of Isabelle Garwood.)

by you in which you swear that the facts set forth in the complaint are true—that you have read the complaint and know the contents thereof, and that the same is true of your own knowledge save as to those matters which are therein stated on information and belief, and that as to those matters you believe it to be true. Is that your signature (pointing)? A. That is my signature. Q. You did swear to that complaint, did you? A. I swore to whatever I put my name to. Q. And you did swear in this courtroom several times that it was represented to you before you bought this that there were 300 acres planted to alfalfa? A. No, I have never said in my life that there were 300 acres planted to alfalfa. Q. Did you swear in [182] this court and in this complaint, that it was represented to you that there were 300 acres of alfalfa? A. First they said there was 300 acres altogether—Dyke said; then afterwards he said there were 250 and 50 acres had been washed out. Q. You knew that when you swore to the complaint, when you testified on direct examination? A. I can't remember all of those little things that they told me. Yes, I first tried to get them to reduce the price. I wanted them to reduce the general price, and after that I asked them to take off the personal property. Then I asked them to throw in the hay. Then I asked them if they would divide the commission. Mr. Crane did not say that he would divide their commissions with Dr. Ramos. What did they say was that if Dr. Ramos would become a partner they would give him commissions,

(Testimony of Isabelle Garwood.)

that even if he was in New York he would get them.

Yes, they spoke of his ability as a salesman. Q.

Thereupon when you found you could not get the other reductions you even sent him to get a share of that commission, did you not? A. No, positively not.

Q. Do you know Mr. C. E. Weinrich? A. I

understood Mr. Weinrich, heard him say to the effect that I wanted him to get it for less. I did ask the

doctor many times to get it for less. Q. How did

you understand what Mr. Weinrich was going to say?

A. I heard it here in court. Q. You don't know it

other than that? A. That is all I know. Q. Did

you, in conversation with Dr. Ramos, on or about

the 25th of September, 1911, at Sacramento City, in

front of a building known as Turner Hall on "K"

Street between 9th and 10th Streets, say to Dr.

Ramos, you and he walking together, "I have decided

to take the place," and did he answer, "But Mr.

Dyke won't pay me my share of the money or my

share of the commission"? A. No, never in my life.

Q. Did you thereupon say, "Make him pay it?"

A. I never said such a thing in my life, no, never.

I said it this way, "Frank, I want you to make them

give me some more money [183] because I can't

pay so much, get them to give me half of the com-

mission." I said that a dozen times. Q. They had

refused to give you the commission? A. I said,

"Give it to me." I thought he could get it for me

because he was always talking to them and saying

to me, "Keep out of the way, I can talk to them,

let me talk to them"; I was trying to get them to give

(Testimony of Isabelle Garwood.)

it to me. Q. They had refused to give it to you?

A. Yes. Q. You knew Mr. Crane had suggested he might get a commission if he helped sell the land?

A. No. Q. Didn't you say in your conversation, "Make him pay, make him pay it"?

A. To make him give it to me. Q. Not using the words "to me" at all?

A. I suppose I did have one conversation and say "make him pay it," but I did not mean to him, I meant to me. Q. You remember the rest of

the conversation, "I have decided to take the place," and his answer, but Dyke would not pay him his share of the commission?

A. If I could get it cheaper—I did take it although I did not get it cheaper,—I did take it, I decided to take it because they told me—

Q. —Didn't he answer you, "Dyke would not agree to pay me my commission"?

A. No, positively. Q. Did you say "make him"?

A. No, I never did. Q. If you said anything you said, "Make him pay the commission to me"?

A. If I said anything it was "Make him give me it," because I asked the doctor over and over again to get it off for me.

Dr. Ramos never used any of that money to buy me an engagement ring. I never made that statement, never. Not to anybody. It is utterly false, and I have denied it many, many times. Yes, in October

Mr. Brown called my attention to the fact that Dr. Ramos had received and had been paid a commis-

sion. Mr. Brown said so. He said that Dr. Ramos had received a commission. That was in October,

1911, and I then sent for the doctor. The doctor told me that he had not received it. He told me he

(Testimony of Isabelle Garwood.)

never received it to his dying day. He told me he never received it. He told me he didn't know they were going to pay him, he never heard of it. He was very indignant when I told him. Q. Don't you know that commission was not [184] to be paid until the sale was consummated? A. I don't know that that commission was ever to be paid, or I would have broken my engagement to Dr. Ramos, and I would never have bought the land, because I would have known they had placed me false, all of them.

Q. But as I understand you Mr. Brown told you that Dr. Ramos did receive the commission? A. Mr.

Brown said so, but Mr. Brown saying so don't make

it so. Q. But he said that Dr. Ramos had received the commission? A. He said the doctor had. Q.

As a matter of fact Dr. Ramos had not received the commission at that time, had he? A. I don't know

a thing, nothing, about it. Had I known it I would not be here to-day, I would have thrown up the whole

thing. Q. When Mr. Brown told you that did you go to the California Colonization Company or any-

body else to ascertain whether or not they had actually paid the commission? A. I did not believe

it, that was the end of it; I did not believe it. I never heard of it again. I asked the doctor over and over

again and he said no he had never had it, they had given him no commission. Q. At that time in Oc-

tober, when you did send for him he had not received the commission? A. I don't know. Q. So you had

a conversation with Dr. Ramos on the 25th of September, 1911, in which you told him to say that you



(Testimony of Isabelle Garwood.)

would not take the place unless his commission were shared with somebody or yourself, you say? A. No, on the 25th of September I went into the office and said, "Have you asked the Scheibers if they will take off that grain?" and they said, "They won't do it." I said, "Won't you throw in the animals, and they said, "When you have paid \$75,000 for 600 acres of land, exactly \$125 an acre, you do not get an animal for an acre." Then they received everything, and then I turned and left with the doctor, and he says, "You ought to be ashamed of yourself, trying to Jew them down that way," and then we walked toward the park and I said, "Do get them to take off the commission, I can't pay so much"; they didn't do it and I went back and bought it because he [185] advised me to. Q. Now, at the time that you paid that \$5,000, I call your attention to the fact that it had not yet been decided that you would not get the personal property and it had not been decided that you were going to pay the full \$75,000? A. No, but I was trying to get them to take it off; if they did not do it, I was going to take it because the doctor had advised me to take it. Q. It was explained to you on the 25th of September, that the Scheiber brothers refused to take less than \$75,000? A. That conversation was later, it must have been on the 26th then. Q. It was on one of those two dates, after you put up your \$5,000? A. Very well. What I told you is true. Q. To the best of your recollection? A. But the facts I remember. Q. The facts you remember? A. Yes. Q. When did Mr. Brown give

(Testimony of Isabelle Garwood.)

you this document marked "Plaintiff's Exhibit 5"?

A. I don't know that Mr. Brown ever gave me any document. What is it? Mr. Brown did not give me this that I know of. I got that paper in the California Colonization Company before I bought the land—I bought the land on those words. Q. This document says "300 acres of land in alfalfa"?

A. I thought it said 600, that isn't it. I couldn't see without my glasses. Q. Have you your glasses?

A. I have. Q. This document says "300 acres in alfalfa"?

A. I don't know anything about this. The only thing I saw was the one which had 600

acres in thoroughly subirrigated land. The one the

California Colonization people gave me was the one that I bought the land from. Q. Is this the docu-

ment? A. I don't know; I have no doubt that is it.

I don't know that the wording was that exactly, but this reads like it—yes, this must be it. Q. That con-

tains the statement that 300 acres are in alfalfa?

A. Yes. Q. You knew that there were only 200?

A. They told me. Q. You knew [186] that the

statement was incorrect, did you not? A. That state-

ment may be incorrect as to the number of alfalfa acres, but it would be correct as regards the alfalfa

and rich land. Q. Did you ask the Scheiber brothers about it when you found there was a misrepresentation with reference to the number of acres in alfalfa?

A. No. They told me this— Q. —Did you ask him

about anything else contained in the advertisement?

A. No, because they told me everything was the

(Testimony of Isabelle Garwood.)

richest alfalfa land, all good, clear level land like what I was looking at.

The COURT.—Q. What was it you said that the Scheibers had told you? A. The Scheibers at their place told me that there had been a break in the levee and 50 acres had been washed out, and they said 50 acres of the alfalfa was old and the rest was new, but after I got on there my man said a great deal of it was old, even of the 200 acres.

Mr. MILLER.—Q. Of this 160 acres of land shown in the lower corner of this ranch you planted some 40 acres to alfalfa, did you not? A. I hired horses, because these horses were no good and turned up the land and planted barley and it was a failure. Q. You had it planted in alfalfa? A. After that the man that is on it at present planted it with alfalfa mixed with barley, and it was a failure. Q. He had a splendid crop? A. It was a failure. Q. This year's crop of alfalfa? A. I have been there this year and seen it. Q. How many crops have you cut from it this year, that 40 acres? A. I don't think he has cut but one. I know he turned the cows into it for pasture; he says it is no good. Q. Do you know that he turned the cows in? A. I know he turned the cows in; he said it was no good. I have paid \$1,000 for alfalfa seed. Q. Did you see the cows in the alfalfa field? A. That that he planted first was out [187] and he planted it again. Q. Please answer my question. The 40 odd acres of alfalfa that you had planted in that 160 acres now, this year, how many crops have been harvested from it? A. I have

(Testimony of Isabelle Garwood.)

not been there this year; I was there last August one day. Yes, it was represented to me that Mr. Dike and Mr. Brown were considering forming a corporation to take this land and run it as a dairy farm. Yes, Mr. Brown and Mr. Dike represented to me what they could do with the land by putting on additional cattle and using it as a dairy farm. Yes, Mr. Brown went into figures quite elaborately to show me what could be made out of it if he were given the management of it. They told me that Mr. Brown had made a study of the implements, that Brown was a farmer and had lately been selling implements for Baker & Hamilton; they had made a thorough study of them, and they were good enough for them to take over, that Dike himself was an old farmer and had made a study of the farm, and he had examined all the animals, the same as Brown had, and considered them all first-class; and I said, "I am no judge of stock, but if they are good enough for you, they are good enough for me to bring an income until I can cut up the land," which was to be done during the Fair. It was represented to me that I could cut up 600 acres of the very finest alfalfa land, and that is what the farmers wanted. It was represented to me that the land could be subdivided and sold at an advance during the Fair, at three times the price I had paid for it. Q. And Dr. Ramos was a party to that representation? A. Dr. Ramos said nothing about the money, he said, "I believe you are getting a good bargain and take it." Q. You relied upon what Dr. Ramos said? A. I relied on Dr. Ramos and them



(Testimony of Isabelle Garwood.)

because they told me that and I relied on that instrument. Q. Prior to that time or about that time you had been told that Mr. Dike was not reliable? [188]

A. Well, no, Mr. Crane said that—Dr. Ramos said that Crane was a gentleman but he did not approve of Dike. Q. Where have you resided since the 1st

of September, 1911? A. 1911? Q. Yes. A. I came out here traveling; had I not bought a farm I would have gone home—I was going home and went to Mr. White to leave the farm in his hands, but when I found out I was cheated I had to remain and I did not get away from here, because I was trying to put the case in law until December, 1912. I did go home once in the meantime and come back. Q. Where did

you go? A. I went to New York. Q. What part of

New York? A. New York City. Q. How long were you there? A. I was only there five days. I

went to negotiate to pay for the animals. Q. What is that? A. I went to negotiate for paying for the ani-

mals that I had taken over. Q. You went to negotiate some of your bonds? A. No, I went to borrow, sell

some things to pay for the animals. Q. You went back to get some money in order to pay for the animals?

A. Yes. Q. Where have you lived since that time?

A. Since that time I have lived in New York City; I was there all the winter of 1913, spent the entire winter in New York, until May, the latter part of May, I came out here; my men were quarreling and said I must come out here and settle things. I wanted to go home, but I was going to almost every lawyer in Sacramento and I could not get anyone to



(Testimony of Isabelle Garwood.)

do anything. I came out in May and I stayed until the 4th of November, trying to get Mr. Macomber interested, and then I went back to New York and stayed there until—I arrived back the 17th of August, last August, and I came out because Mr. Macomber told me the case was coming up in November; I wanted to go back home then when I found out it was continued, but he would not let me go.

Q. Have you any relatives in New York City?

A. No, they [189] are all dead; my father and mother kept house there.

Q. Have you a permanent residence in New York City?

A. I lived in the Madison Square Apartment house two winters before I bought the property; the winter before I bought it I lived in the Stratford House.

Q. The winter before you bought the property you lived in the Stratford House. Where did you live the winter after?

A. In Sacramento. I was trying to get it in law.

Q. The winter of 1912?

A. I was in Sacramento.

Q. The winter of 1912 and Spring of 1913, you were not in Sacramento, were you?

A. I was in Sacramento all the time. I was trying to get this case in the lawyer's hands.

Q. Weren't you in New York nearly the first half of 1913, up to May, 1913?

A. I was in New York in 1913. You were speaking of 1912?

Q. The beginning of 1913.

A. I left Sacramento in December, 1912.

Q. And went to New York?

A. Yes.

Q. Where did you stay in New York?

A. I stayed at the hotel.

Q. You have no property of any kind there, have you?

A. I have property in Jersey.

Q. What kind of property?

(Testimony of Isabelle Garwood.)

A. A lot. Q. In Jersey City? A. Yes. Q. You never resided on it? A. I was born in Jersey City. Q. You never resided on that lot? A. Oh, no. I have lived in hotels ever since my mother died, apartment hotels. Q. When you came out here you lived in an apartment hotel? A. Yes. Q. You lived in the St. Francis for many months? A. I was coming back between Sacramento and the St. Francis, I had to stay here on account of the law. Q. Do you still own that lot in Jersey? A. Yes. Q. The only other property you own is this property in Sutter County? A. No, I own property in Kansas that was left to me. Q. Now, Miss Garwood, about three months after you got this place, did Mr. Charles Silva offer to take it off your hands at the price you paid for it? [190]

Mr. MACOMBER.—We object to that as immaterial, irrelevant and incompetent and nothing to do with the case whatever; it does not make any difference what offer was made to her.

The COURT.—When was that?

Mr. MILLER.—About three months after the purchase of the property.

The COURT.—I will overrule the objection.

A. No, sir, Silver never offered to take that place off my hands. Nobody ever offered to take it off my hands.

Mr. MILLER.—Didn't he offer to give you the same price you paid for it? A. He did not. Mr. Silva took me out there in his car and told me I have a very good man in Mr. Scammell, to let him stay there,

(Testimony of Isabelle Garwood.)

but if I wished he would look after the place.

Q. Didn't he offer to buy it from you? A. Didn't I tell you he did not; he never mentioned it to me.

Q. How many suits have you brought in relation to this land? A. I brought one previous to this; it never matured.

Q. In Sutter County? A. In Sutter County.

Q. Did you commence actions in the Superior Court of this city and county? A. Never but this one court; this is the only time.

Mr. MILLER.—I guess counsel will admit as to that.

Mr. MACOMBER.—I guess you have forgotten about that; there were two suits filed in the Superior Court here. That is right. A. I don't know anything about that.

Mr. MILLER.—Q. They all involved the same matter, did they not, the same property? A. The same property, certainly.

#### Redirect Examination.

I was born in Jersey City. I lived in New York for a great many years, and kept house there. The last time I went East [191] was on the 4th of November, 1913. I returned the 17th of August, 1914. I returned because Mr. Macomber told me my case was coming up in November and my sister was coming from New York to Chicago and asked me to come with her. I asked Mr. White how much I owed him, and he said the bill will come along in good time. I took my contract with Mr. Brown to him, because he was my lawyer. Mr. White never sent me a bill. When this case is cleared up, I expect to go home to

(Testimony of Isabelle Garwood.)

New York. The Doctor gave me an engagement ring in May, 1911; in May or April, 1911, in New York City. He bought the ring of a man named Court, who keeps a small jewelry store in Jersey City. His business is on Monticello Avenue, not far from Bergen's place. The stones were brought to New York for selection. I selected the stone myself. He never gave me but one; he never bought me any other.

**Testimony of W. H. Ewen, for Plaintiff.**

W. H. EWEN, called for the plaintiff, testified as follows: My name is Wm. Henry Ewen. I live at 3515 Sacramento Street, San Francisco. I was two years on the Nicolaus Allgier place, about 1½ miles south of Nicolaus in Sutter County, California. I went upon the place in 1890 and was on the place two years. I saw this land previous to the time I actually farmed it. I was often down there by the place, and on the place. I lived in Nicolaus for about 10 years. I was running a stage line carrying passengers and mail for about 9 years, and I had occasion to take passengers down by this land. During the time I was running the State line I had a good deal of business with Mr. J. C. Regan, who then owned the ranch, and my business with him took me down to see the man who was taking care of the place, and I went down there at all times, both summer and winter—when the water was over the place, and at other times when there would be haying and so on. The overflow used to come from the Sacramento up to [192] that place, that was the end of the overflow.



(Testimony of W. H. Ewen.)

It came up between the Swall place, Johnnie Swall's, and came through the channel there and covered the back of the Regan ranch. There was about 200 acres of the land in the back of the ranch which was overflow land; it would run into the back field, and then across the second quarter section of what is now termed the Scheiber ranch. It used to be then the Redfield ranch. The water came up from the tules. The tules ran along the river, and when the water was high in the river, it used to back up over the tules and go right up to the Nicolaus ranch, and then overflow the land. I have seen that land overflowed for two or three months at a time—completely submerged, not over all the ranch, but all over the back field,—about 200 acres of it. That portion of the ranch up toward the county road that runs from Nicolaus, is the highest point of elevation; that is to say, the portion of the land nearer to the levee has a greater elevation than the rear portion of the ranch. I am now speaking of the Nicolaus Allgier ranch.

Mr. MACOMBER.—Q. Mr. Ewen, are you familiar with soils and with farming land in general?

A. Yes. I have had a good deal of experience in farming, not only in this country, but in Canada. I was ten years farming in Canada exclusively, and I was two years farming on the Chandler ranch before

I went into the stage business. Q. Do you understand what is meant by the expression “subirrigation”? A. Well, no, I am not familiar with the word without you can explain it to me in some way. By subirrigation, is that from seepage, or is it from the



(Testimony of W. H. Ewen.)

water that is let into a place to irrigate? Q. What I mean by subirrigation is seepage. A. There is land, a good deal of it, on that ranch, that is kept green all the year around by the seepage from the river. Q. There is? A. Yes. [193] Q. That land, you say, grows alfalfa all the year around from seepage? A. Yes, it would grow all of the year around from the seepage from the river. Q. About how much land is of that character on that ranch?

Mr. MILLER.—We object to this as not referring to the present, but referring to a time 25 years ago.

Mr. MACOMBER.—That is all right, 25 years ago; that is all we expect, 25 years ago. A. There was about 250 acres, as you call subirrigation, that would be good for subirrigation on the ranch. Q. What portion of the place was that that was subirrigated, that is, water by seepage? A. There was a field called the 100-acre field on the county road coming from Nicolaus in front of the levee; that was mostly in alfalfa there all the time; then there was a field back of that, another quarter of a section that went very near down to where the old house was, what they called the Hallett house, and then there was a hollow that ran out from the back field—part of that quarter section would overflow from the tule. Q. That is all right about that. We do not care anything about that. A. (Continuing:) Then there was 40 acres of oak grove which would make good alfalfa land, that laid all right. And there must have been, about, as near as I can remember, about 250 acres of land that would grow alfalfa. Q. What

Testimony of W. H. Ewen.)

about the extreme rear end of the land—do you recognize this map as being a likeness of the boundaries, at least of the outlines of that ranch? A. This is the Nicolaus Allgier ranch. Yes, I recognize the map you show me, that looks to be about the shape of the ranch; the back field is down at the bottom here. Yes, I know the land which will produce alfalfa, and the land which will not produce alfalfa. The land at the rear isn't any good for alfalfa, unless they can get in water and irrigate—not in the back field, it dries up. It is a hard clay bottom, and it is not a loamy soil; it is a very stiff clay in [194] that back field, because I have had to plow it up a couple of times; in fact, I plowed it three times, and it is a very stiff bottom land. When the waters go down, then it dries up and bakes, so that if there was any crop in there, of course it would mature an annual crop, but it would not be good for alfalfa. It would dry out, unless they had water flowing over it to irrigate it. It is just the same as any high land that you have to irrigate, you can raise alfalfa only after the Spring. You might get one crop or two off of it, but after that it would dry out. That is the way it is with the back field, and a part of the other quarter section where it runs down through a hollow and over to the Redfield place. I would say that there are about 200 acres of land, such as I have just described, of low overflow land on that ranch. Yes, I had a crop drowned out there, that was in 1891; that was barley. I put it in in March, and then the high water came about a month later. "It had all

(Testimony of W. H. Ewen.)

come up and was green all over when the water came up and drowned that out, and then I had to wait until the water went down, and then I just harrowed, and put it in again, and raised a crop for the second time. I put it in the first year I was on the ranch. The next year I plowed the ground in the fall and got it all ready for the next spring, and I waited until late, until I thought all the water was gone down, and then I put it in, and it grew up and looked apparently like it was going to be a fine crop, and then the snow raised the river—by the snow coming off the mountain it raised the river in June, after the crop was all headed out, and it backed up the water on the tule land, on the tule where the overflow, as they call it, came up, and I put a dam and held it back for two weeks, and the dam broke on me, and it flooded the whole thing, so I lost that crop; it went all over the ranch at that time. Q. In what month did you say that was that occurred? A. That was in June. Q. Of what year? A. That was in 1892.

Cross-examination.

I was in Nicolaus about three years ago. I was on the Nicolaus Allgier ranch at that time. I went through it, down [195] through the land, and came through that way. I went to see some friends out on the river. Yes, I noticed alfalfa growing along where I went through the lane. It looked green to me as I went along; I could not tell you what kind of a crop it was, I did not notice it. I was there in April, that is the only time I had been in Nicolaus

Testimony of W. H. Ewen.)

since I left the ranch. I left it there in 1893, that is the only time, I have not been there since. I believe there has been something done to the levees along the Bear and Feather Rivers since I was there, but I cannot say how they have been fixed. Yes, that map represents the shape of the Allgier ranch as it existed when I was there. When I was there there was a bend in the levee running up toward the house where the big barn was, and the house I lived in at first, right in the corner by the levee. I believe the river isn't in the same place now, because I have been told that it has been straightened along there. I could not tell by looking at the map now, unless the changes were explained to me. In 1891 and '92 the Feather River did not run in a straight course, as it is now shown on the map, it came down from the town of Nicolaus toward the Nicolaus ranch, and then it made a bend at that point away out. It run west of there as near as I can think of it. It made a bend away around at that point called the Nelson Bend; it made a regular circle right around there where the Nicolaus ranch and Claus Peters' old place was. Along the river at that point there was just swamp grass. On all of those farms along the river in the vicinity of the Nicolaus Allgier place some places had alfalfa, and some places had just wild grass for pasture. There was some grain. There was not much buckwheat on this side when I was here, with the exception of one time I put it in myself. It takes a sort of river land to raise good buckwheat, there has to be more moisture to grow it. I

(Testimony of W. H. Ewen.)

put a crop of buckwheat on the land where the barley was drowned [196] out right after the flood, and got a fair crop. I had a fair crop, yes. On this back land, the 200 acres at the rear of the Nicolaus Allgier place, I never dug any wells. There were wells already there; there was a well in the back field. I could not say how far it was to water there; I never knew the depth of the well, because I never had any occasion to take up the valves; it was always in working order while I was there, it was a deep well.

#### Redirect Examination.

There was a break in the levee while I was on the ranch. There was a break in the levee on New Year's Eve of 1892. I noticed how the levee had been repaired when I was there the last time. The levee broke right by the house where the big barn was, and the house that Regan used to live in when I was working the place. I remember the character of the land that lay on the outside of the levee; it was sediment that flows up there from the river inside the levee. When the river went down sometimes they turned hogs in there, they had a wire fence around the course of the river so as to keep the hogs intact; they used to turn their hogs in that and sometimes the cows. In the high water, it was almost all the time covered over. I could not say exactly how many acres there was outside the levee, it was quite a stretch down to where the river was running. To my knowledge, fronting the Regan ranch, it looked to be about 40 or 50 acres right along the river.



(Testimony of H. W. Furlong.)

Recross-examination.

You could see the timber riding along the road.

**Testimony of H. W. Furlong, for Plaintiff.**

H. W. FURLONG, called for the plaintiff, testified as follows:

My name is H. W. Furlong. I reside in Berkeley. I am an agricultural engineer by profession. My business is conducted [197] as a corporation, the name of which is Bigler, Paul & Furlong, incorporated under the laws of the state of California. Our principal place of business is at Sacramento. Our laboratories are there, across the river in Yolo County. Our business is to report upon agricultural lands and recommend treatment of lands and choice of crops. I have had occasion to examine the soils of lands. We make analytical tests of soil, mechanical tests, chemical tests; we correlate all the factors which go toward making agricultural lands economically desirable. We determine the economical desirability of lands by correlating the factors of climate with mechanical characteristics of the soil and with the climatic factors and other economic factors. We consider and determine the chemical constituency of soils. I have my own idea as to what is meant by subirrigation; it is a much abused term. It is a general term that is frequently used with a great deal of license. I have been in Sutter County along the Feather River from Nicolaus down, and I have been on the Nicolaus Allgier place, which is now known as the Garwood place. I am familiar

(Testimony of H. W. Furlong.)

with that particular land. I am familiar with the soil in that neighborhood. I understand the geological features of that vicinity, and of the adjacent territory. I understand how that land happened to be there in that particular condition. I understand the geological explanation of it. I am familiar with what land is good for alfalfa, and what is not. There are many conditions which must be correlated with the land. I have had experience in examining alfalfa land, and I have reported on alfalfa land. I have had experience in the purchasing of alfalfa land. I am familiar with the values of alfalfa land more or less throughout this State. I have examined the land on this particular ranch now known as the Garwood place, about a mile and a half below the town of Nicolaus. I don't remember the exact date, but I think it was about 4 weeks ago. I am familiar [198] with the 200 acres of land at the southeasterly end of the Garwood place—that is the 160 acres of the quarter section, and the land immediately adjacent on the north; that land is not good alfalfa land. I should like to qualify my statement in a slight measure. The types of soil into which this ranch is divided do not run across the ranch, but they run more toward the north and south, in that direction; therefore, a small fraction of the southerly 160 acres might be excluded from my classification, and a larger fraction of the adjoining parcel on the east be included in it. My statement was general covering that end of the ranch. The soil of the extreme Southeasterly corner of the

(Testimony of H. W. Furlong.)

ranch is a clay sub-soil overlain by a clay loam. The top one or two inches is lighter in character, and getting increasingly dense as you increase the depth. That soil is not subirrigated according to my understanding of the term "subirrigation." The term "subirrigation" to me means any piece of ground that is provided with a sufficient amount of moving water from subterranean sources, either running parallel to the plane of the surface, or coming from below. Yes, I mean to raise crops on—to properly provide growing crops with moisture. You see why I discriminate that way is the fact that a piece of ground that is water-logged, where water may flow into a cut or depression and gradually percolate, but is stagnant, you would hardly call subirrigated. Crops must have a movement of water. In the rear portion of that land, I should say, there is not such a movement of water as I have spoken of. I will qualify that. In all soils there is some movement of water, but by movement of water I mean movement in an appreciable measure, and sufficient for the best interest of deep rooted crops. I mean a practical flow of water. The heavier clay subsoil which determines the amount of subirrigation lies in a general direction parallel with the direction of the river, and from a point approximately in here, it [199] comes off in this direction, excluding a portion, I should say, of this field. I would not want to say definitely it was five or ten acres, but somewhere between five and 15 acres, and including here anywhere from 40 to 60 acres approximately. I did

(Testimony of H. W. Furlong.)

not measure the ground as a surveyor or follow the lines that were shown to me to be quarter section lines and estimate according to that. As to whether or not it would be commercially practical to grow alfalfa on land subject to overflow would depend entirely upon circumstances governing the overflow. By that I mean the period of time that the water was over the land. The depth of the water over the land, and the character of the land with regard to permitting drainage after the subsidance of the surface water.

Q. In reference to the growth of alfalfa on land which is liable to overflow, is it commercially practicable or is it not, to grow alfalfa on land which is subject to overflow; what can you say to that? A. It would depend entirely upon circumstances governing the overflow? Q. What do you mean by that? A. The period of time that the water was over the land, the depth of the water over the land, the character of the land with regard to permitting drainage after the subsidance of the surface water. Q. If you have alfalfa growing on land and water from any source comes and covers that alfalfa, submerges the alfalfa, keeps the land saturated, how long a time does it take to be fatal to the alfalfa?

Mr. MILLER.—I object to the question as immaterial, irrelevant and incompetent.

Mr. MACOMBER.—Q. Do you know enough about alfalfa to state that?

A. I believe that I do know. Q. Will you state?



(Testimony of H. W. Furlong.)

Mr. MILLER.—Objected to as incompetent.

[200]

The COURT.—The objection is overruled.

Mr. MILLER.—Exception.

A. On land of this character, where water would cover the land and partially cover or entirely cover the plant, and where it would be subjected to being caught in depressions and held there by the dense character of the land, combined with the small amount of oxygen present in the dense land, I should say that two or three days would be prejudicial to the plant, and probably 7 to 12 days would be fatal, practically.

The COURT.—Q. Depending upon the age of the plant? A. Depending upon the character of the weather, whether it is very hot sunshine afterwards or cloudy, yes, and whether the alfalfa were rapidly growing; but I should say in any event that 8 or 10 days would be very prejudicial. There is oxygen in the ground there, but not a great deal available. The land is acid in character; it reacts to test for acid. That character of land is detrimental to alfalfa, and is detrimental to most plant life. The water seeps into the soil to a certain extent away from the levee along the Feather River at this point. Q. Now, why is it that the water seeps through there and when it gets out there is enough to irrigate the crops in here, the alfalfa, and does not likewise as you go further away? A. I can explain that better on the board and use fewer words. I will not vouch for the proportions of this. The theory is



(Testimony of H. W. Furlong.)

all that I intend to show. This being the bed of the Feather River; the Feather River, in the course of the last several hundred years has moved back and forth, as rivers do; of course, it is building itself up; and over this portion it has eroded the older surface; the older surface through all this section probably having been a lake bed, a lake bed in which a great deal of silt has ben deposited and had become very compact, lying there for no one knows how long, and being of an undertermined depth, the Feather River, in washing [201] back and forth, has deposited through this area sands and gravels which are large and therefore have no more open spaces owing to the fact that their deposition took place first in the action of that erosion; as the water loses its strength, it deposits increasingly dense material and therefor more dense the river has got at various times across that old lake bed, cutting into it, that clay subsoil, and has gradually cut such an area of space as this. Now, through all of that area, the water can come; immediately it strikes this more dense subsoil, it is blocked; I do not mean that that subsoil will not take up a small quantity of water, it probably will, but not in sufficient quantity to recognize it as sub-irrigation. Now, on this property, this line comes up, at about the point that I drew that line which I drew on the map, and at this point you get very little water action, and as you go further toward the river naturally you get more; the capillary attraction, of course, comes throughout all of this soil where the water underlies it; it is all at a depth

(Testimony of H. W. Furlong.)

sufficiently shallow to permit capillary attraction to serve it. I took pictures of the land, I took them upon the occasion of my visit to the ranch. I took some of these pictures as I sat in an automobile on the road which runs westward, approximately from the ranch-house there on the land at a point about midway between the ranch-house and the westerly boundary of the property. The probable southerly extent of the action of subirrigation is outlined there by the growth of alfalfa, which is to be seen in the mid-distance in the picture. That irregularity of outline of the edge of the growth of alfalfa would be dependent on those conditions, because this soil does not rapidly and immediately merge from one type into another at contact, but it fluctuates within an area of probably one-fourth of a mile back and forth across and along this line of demarcation. It is a zone [202] rather than a line, and that would indicate very clearly the existence of subirrigation and its limits in that direction. I took this picture when I was somewhere in the vicinity of that cross there, where the ranch house is, if anything more southerly. They were both taken at that point. One of the pictures was taken looking in a north-westerly direction, and the other in an east of north direction. I examined the land northwesterly of the old levee, and made an investigation of that land. That land merges from sand into a light sandy loam. That land is not alfalfa land—not because of lack of fertility, but because of its position. I have had experience in purchasing alfalfa lands, I have bought

(Testimony of H. W. Furlong.)

alfalfa land. Q. Are you familiar with the values of alfalfa land? A. Fairly so.

The COURT.—Q. In that locality? A. In that general locality, yes.

Mr. MACOMBER.—Q. Would you state your opinion as to the value of that land, outside the old levee, the land between the two there?

Mr. MILLER.—We object to that as immaterial, irrelevant and incompetent; the witness is not shown to know the value of the land, know what it would sell for in the open market; what he has said as to being familiar with the general locality is not sufficient to qualify him in the matter,—he is not a land owner or expert in the business.

The COURT.—It is not shown how long since he purchased any land and when he obtained his knowledge.

Mr. MACOMBER.—Q. Mr. Furlong, do you know what lands have sold for along here, along the Feather River, within the last four years, any of the land along the river? A. I do. [203]

Q. Now, what have these lands sold for there?

Mr. MILLER.—I object to that as incompetent.

The COURT.—The objection is overruled. What other lands sell for in the immediate vicinity and about the time in question is always admissible to fix the market value.

Mr. MILLER.—I understand the law in this state to be that a witness may state that he knows land was sold here and there, what pieces were sold, without giving any price for which they were sold, and after

(Testimony of H. W. Furlong.)

he has qualified himself as an expert at that particular time when the value of the land in question is to be determined, he can then testify that he knew the market value and what it was of this particular land, not of any other land, or what it sold for; I think that is the rule in the state court.

The COURT.—I think it is correct, too. The objection which counsel pointed out more specifically as his objection, I will sustain.

Mr. MACOMBER.—Q. Mr. Furlong, will you state, basing your statement upon your knowledge of the sales of real estate in that vicinity, what that land was worth out there, outside of the old levee?

Mr. MILLER.—Objected to on the same grounds.

The COURT.—In 1911?

Mr. MACOMBER.—In 1911.

The COURT.—If he knows. A. Yes.

The COURT.—The objection is overruled.

Mr. MILLER.—May we ask a question there?

The COURT.—Yes.

Mr. MILLER.—Q. Do you know of any land like that between two levees that was sold in 1911 in that immediate vicinity? A. I know of land that was sold prior to 1911. Q. How long prior? A. The land that the Natomas purchased. Q. What land was it? A. I would have to refresh my memory to give you the [204] exact location of that land. Q. Do you mean that the Natomas Consolidated reclaimed certain lands in the American River basin and sold that land? A. They purchased land in the American River, I know the price for which they

(Testimony of H. W. Furlong.)

purchased the land. Q. Lands which were subject to an overflow from the American and Sacramento Rivers, continuous overflow? A. Immediately to the south of this portion. Q. And required an expenditure of large sums of money to reclaim it? A. No more than this piece. Q. How far from this land? A. I should say possibly it is half a mile, and the other case that the Natomas sold about 1911 or 1912, about two miles. Q. Am I right in this: Those purchases were made after the Natomas Consolidated had organized two reclamation districts known as 1000 and 1001, and had notified the people that an assessment of \$75 or \$80 an acre would be levied upon the land? A. I think it was about the time of this sale, about in 1911. Q. And that one-third of that would be called in immediately, and that those who did not sell to them would be compelled to put up that money in cash at once? A. At that time the Natomas plans were not completed; it was not known what the reclamation would be; I know varying estimates were made. Q. Then it was sometime prior to 1911? A. They did not know yet what the reclamation would be. Q. Am I right in saying that they controlled both of these districts and had the management of the districts, and the land owners of the district were so advised before they made the purchase? A. I cannot tell you as to that positively. Q. Do you know that the owners were forced to sell because they were unable to pay this assessment which the Natomas Consolidated intended to levy upon the lands? A. You mean forced to? Q.



(Testimony of H. W. Furlong.)

Forced to sell because they could not stand the reclamation assessment? A. I don't know that they [205] were forced to do that; that would be an inference on my part, because it had not been done at the time; they would have been operating from inference, and I would of necessity also have to argue from inference; I don't know that. Q. Don't you know as a matter of fact that \$26 an acre was called in prior to November 1911, on the lands that you refer to, and on the lands in that 1001 district? A. I don't know the amounts that were called in. I know that was increased from time to time, as has been the case, I think, with every reclamation district in the State of California; we usually under-estimate rather than over-estimate. Q. Are you engaged in the real estate business? A. No. I own farm property—I am interested in farm property. Q. Where? A. About 6 miles west of this piece, on the west side of the Sacramento River, in Elkhorn reclamation district; I own an interest in 200 acres in West Sacramento. Q. Did you buy it of Cave & Clark? Where, in the Elkhorn district, is that? A. No, we bought it from Mr. Ashley, county surveyor of Yolo. Q. Is that land some of the alkali belt that goes through there, or not? A. I should say that all of these lands are subject to alkali, depending upon the amount. Q. Is it a corporation that owns the land that you say you are interested in? A. No, Mr. Harbinson and myself purchased it from Mr. Ashley. Q. When did you purchase it? A. I think in 1911

(Testimony of H. W. Furlong.)

or the early part of 1912. Q. Is it situated similar to this land? A. It is in a reclamation land listric; it is similar to this, but the interior drainage is not complete. Q. You don't know whether outside levees were put up on this land in 1911 or not, do you? A. I am given to understand, my best recollection is I was up [206] there with Mr. Oliver watching the progress of that outside levee, and according to my recollection it was somewhere about 1911, the latter part of 1911 or 1912— even later they worked on it last year; I was up there at that time. Q. Do you know as a fact that the levees were not constructed in 1911? A. I think they were not, the outside levees—the dredge “Hercules” was up there and was working; I don't know whether on that unit or not.

The COURT.—The objection will be overruled.

Mr. MILLER.—Q. The land that you own is across the Sacramento River? A. Yes, on the Elkhorn side.

Mr. MILLER.—We except to the ruling.

The COURT.—We will now adjourn until tomorrow.

Mr. MACOMBER.—If your Honor please, I have a witness here from Sacramento who is very anxious to get away, and I anticipate the cross-examination of Mr. Furlong will take some considerable time anyway, and I would like to call him.

The COURT.—I cannot do that. I must hear this testimony in its regular order; it takes too much time to try a case in that manner. I would like to

(Testimony of H. W. Furlong.)

accommodate you, but the time has arrived when I must expedite this case. I want to say to you gentlemen I am absolutely compelled to be in Los Angeles on Thursday morning; I had hoped to leave here this morning; to-morrow evening I am compelled to go, and if you take up very much more of the time in introducing cumulative testimony and do not give the defendants time to introduce their testimony, the case will have to be withdrawn and started over again, because it is utterly impossible for me to be here any longer than that time; I am compelled to be in Los Angeles on Thursday morning. Recall the witness upon the stand when we adjourned.

H. W. FURLONG, direct examination resumed.

[207]

Mr. MACOMBER.—Read the last question to the witness, Mr. Reporter.

(The following question repeated by the reporter:)

“Q. Mr. Furlong, will you state, basing your statements upon your knowledge of the sales of real estate in that vicinity, what was the land worth out there, outside of the old levee?”

If I remember right, counsel objected to that question and the Court overruled it. I ask you, Mr. Furlong, for the value in 1911 of this land outside of the *of the* old levee? A. For agricultural purposes, I should say the land was valueless at that time. Q. That is the land lying to the northwest? A. To the north of the old levee, northerly of the old levee.

To the best of my recollection, it was during the first week of July, 1915, that I took those photo-

(Testimony of H. W. Furlong.)

graphs at that point. I took the picture on the levee at the northwest corner of the ranch looking in a northwesterly direction. This is the picture. (Photograph marked "Plaintiff's Exhibit 7.") These other pictures I took at intervals along the crest of the old levee, looking northwesterly. I should like to add to this one photograph that shows a small portion of cleared land, a very small piece, in order to show its character. With the exception of this small portion of land, comparatively a few acres in extent, all of the land between the two levees is of that general character, uneven, very heavily timbered, and barrow pits made at the time the earth was used to make the old levee. It would not have been commercially practicable for the owner of that land to have reclaimed it, or render it fit for agricultural purposes. It would have cost many thousands of dollars for a levee capable of protecting that piece of ground. The levee that is now there almost gave away last year. After a levee was completed, the cost of clearing the ground would amount to as much as you could purchase it for already cleared and probably protected. Land of that character, properly cleared [208] and cultivated, depending upon its location with regard to transportation, would run from \$75 to \$150 per acre, in specially favored locations. Where other factors in land values occurred, it might run up to \$200 an acre; but land similarly situated as that, I should say \$100 to \$125 an acre. By that I mean for the very best land

(Testimony of H. W. Furlong.)

in that situation, in that neighborhood, at that time. I do not know anything about the elevation there, except from the topographical map, the Government map, and my knowledge of such work—I have handled a great deal of such work; it is very evident to anyone as a practical matter to know whether there is a hole full of water, and there is a hummock inside. The land lying immediately along the new levee is higher, because of the excess material put in there, more easily cultivated than the other land which is lower and submerged in a great part at the present time. I am referring now to the land between the two levees. Referring to the land at the southeasterly end of the ranch, I would say that the market value of that land in 1911 would not exceed \$60 an acre. I would place that value on 220 or 230 acres in there. I have worked as a practical farmer. I have had charge of the work at various times of 1500 or 2000 acres.

#### Cross-examination.

The land outside of the old levee is submerged as agricultural land, yes, there are holes there in which the water fully submerged the ground. Yes, there is water there at points other than in the barrow pits where the water is within a few inches of the surface. Not in every case does it cover the surface, but that is not necessary really to prevent its being available for agricultural. I do not know the readings of the water in the river, [209] that varies from day to day. If the land were 12 or 14



(Testimony of H. W. Furlong.)

feet higher, higher by actual elevation than the river, and the drainage were good, there would be no water in the barrow pits, if all the conditions were good; it would drain. That would depend upon the character of the soil at the barrow pit. You could not make borings of that soil in the barrow pits, it was full of water. It could have been done, but not practically. I did not see water covering the surface, between the two levees, other than the barrow pits, but I made a boring there and found this very wet condition of the soil. I speak of it being submerged agriculturally—we talk of land being submerged when the water plane is so close to the surface you cannot grow crops on it. I have explained that a portion of the land is higher and cleared, this higher portion or hummocks, but most of them are covered with a dense growth. I am trying to speak always from an agricultural standpoint. Q. If the water in the river at the present time is 12 or 14 feet lower than the lowest elevation of that land, what is your explanation of the fact of its being submerged as you understand it? A. The hydraulic gradient in different soils is purely a matter—you can tell exactly by certain tests the plane of the hydraulic gradient; in other words, some soils, the water table will rise one foot in a hundred, in others one foot in fifty, in others the water table will rise one foot in two hundred, as you increase the distance away from your water supply. This water under this has its effect

(Testimony of H. W. Furlong.)

upon that, but these factors are very easily determined—the capillary attraction of water brings a great deal up. Q. Then I understand you do not mean to convey the idea that that land was covered with water when you were there? A. I have explained that. Q. Please answer the question: You did not intend to convey that idea, that the land was covered with water, did you? A. Covered above the surface and looking like a lake, you mean? No, I did not mean to convey that idea. [210] Q. Did you make any borings between the two levees? A. Yes. Q. How many? A. I think three. Q. At what points? A. One in about here, just at the turn, and one over in here, and the other up about in the trees, about here. Q. You did not make any borings in the northeast portion of the place? A. Over by the river, no, I did not. As a matter of fact, I would say that my borings were not made for the purpose of testing for the water contents, but the character of the soil. Q. How deep did you bore? A. About five feet. Q. Did you find water in that distance in any of your borings? A. We found very wet ground; practically—Q. (Intg.) I asked you the question, did you find water? A. Yes, there must have been water there for the ground to have been very wet; of course we did. Q. Did water stand in the borings? A. I did not wait to see that; I presume it would have; I should assume that it would have later. I was not looking for water. Q. You are acquainted with conditions generally throughout the Sacramento

(Testimony of H. W. Furlong.)

Valley, with reference to subirrigation, are you not?

A. In some localities, and in others I am not. Q.

What localities? A. I should say along the Sacramento River and the Feather River and the

Yuba River, and along the American. Q. Have

you made any soil tests in Butte County? A. No,

not in Butte County. Q. Did you ever make any

in Colusa County? A. Yes. Q. At that point?

A. I don't remember the name of the ranch, it is a

ranch that was later purchased by the president

of the California Creamery—I made a report on

2200 acres. Q. Yuba County? A. No, it is on the

west side of the river. Q. You never have made

any there? A. Where? A. In Yuba County?

A. No, I have no such borings. Q. Have you ever

made any of Sutter County than the Scheiber

ranch? A. Yes. Q. Where? A. District 70, for

the Alameda Sugar Co. Q. How far did you have

to go to [211] water? A. Various distances.

Q. Do you know whether or not the substrata of

water is generally about the same throughout the

level portion of the Sacramento Valley, from Chico

to Sacramento? A. The water table, the water plane

varies with the type of ground in which it is found.

Q. On the easterly side of the Scheiber ranch, do

you know whether it is any farther to water than

it is on the westerly side? A. It is closer to water

on the easterly side than on the westerly side, I

think, at the present time. Q. Is that not always

the case, speaking of the present time? A. I would

hesitate to say that. The water table at the present

(Testimony of H. W. Furlong.)

time on the easterly side is about ten feet, I am approximating that depth, but it cannot get through, it is of no value, there is a dry area between it and the surface; it might as well be 100 feet for practical purposes. Q. How many places did you make borings on the easterly side of the old levee? A. I think four or five. Q. At what points on the ranch? A. At about the southwest corner, the southeast, and then two thirds—well, at the other corner, at the northeast corner of the south 160 acres. Q. Did you make any borings on any of the adjoining ranches? A. No. Yes, it is true soil will change materially in short distances in the Sacramento Valley—within 20 feet. I have frequently seen good alfalfa land on one side of the river and absolutely poor land on the opposite bank. This land itself shows that characteristic. Bedrock, as true bedrock, does not exist in the Sacramento Valley. Bedrock and hard-pan are very different things entirely. The bedrock is at a very great depth, and possibly at points 2,000 or 3,000 feet in depth. The hard-pan exists at any place where there is hard-pan, from 20 feet below the surface to 4 feet above the general surface of the soil. Hard-pan exists, where there is hard-pan, and the average throughout [212] the Valley would be any point between 16 feet below the surface and 3 or 4 feet above the general surface of the soil; that is, where a long layer of hard-pan has been eroded, the soil has been eroded away from it. I said that the hard-pan, exists in many cases clear to the surface



(Testimony of H. W. Furlong.)

of the soil, and above the general surface. That is not the condition throughout the Valley. The hard-pan is more typical of the land which lies east of the Sacramento River, to an elevation perhaps 800 feet above sea level, going easterly; then you get out of the real hard-pan. Yes, I have made borings in the land of what is termed the Sutter Basin. I do not recall the precise point, but some of them are quite low in the basin. I was looking for the different types of soil as we traveled across the country. We were in an automobile, and we would get out in the road and make borings. Yes, in the lower soil where the water had drained, we found acid in these soils. We did not find it in all places, not where cultivation had taken place. Yes, there has been cultivation in the Sutter Basin, and some of the land put into beans. I don't remember whether I made any borings in the Sutter Basin south of the Southern Pacific Railroad trestle, although I have been over that ground, over the whole district. I don't recall just where the borings were made; I know that I traveled over it and made several borings in the Sutter Basin for the Alameda Sugar Company. When I spoke of an ancient lake-bed I meant a chain of lakes, probably 4 or 5; the American basin is probably one, the Sutter Basin another, and Yuba and Colusa basin another. All separate and probably connected with sloughs. Geologically, that is thought to be the case; there is every indication, both from borings and contour lines—it is a depression. I



(Testimony of H. W. Furlong.)

did not find any gravel myself on the Scheiber [213] Ranch; I would not be surprised to find lenses of gravel there; it is typical of that country. Yes, it is the custom, in boring wells to go down to the gravel strata. As to what depth they have to go on the Scheiber place to find that condition, I know only from what they told me with regard to the domestic well there. That line observed in the picture is the line of demarcation between the alfalfa and the indigenous weeds. The alfalfa stops; the entire ground where the picture was taken and showing the line of demarcation is not alfalfa. I was on the land about the first week of July; I think it was somewhere about the 7th or 8th. Yes, I noticed some alfalfa in the northeast quarter of section 24 at the time I was there. There was some alfalfa attempting to grow there. I have been over that section of the country a great many times. It is very populous. Yes, very many old residents live there. Many of the farms on the higher ground have been farmed a long while. No, I have not bought or sold any land in that locality, unless, as I say, just across the river, I have a short distance from there. No, I would not say Mr. Hewitt, that it is hardly possible to find any two acres alike right along side of each other throughout the Valley. In different sections the conditions vary. You can find very large areas of land practically all uniform; and then in other places, particularly along the zone of change between types, you find a great variation. I have never been engaged

(Testimony of H. W. Furlong.)

in real estate as a business, except that my work has been the development of land; I have never had a real estate office. I have never sold land on commissions. I will qualify that statement that I have in one or two cases helped in handling land, but never as a real estate agent. I attempted to be at one time, but I failed.

Redirect Examination.

The alfalfa that I saw on the quarter section is a very poor stand. [214]

The COURT.—Is Mr. Fox in court?

Mr. MACOMBER.—He is not here; he will be here at eleven o'clock. In the meantime we can take up the time with the depositions.

The COURT.—Very well. You need not read them to me, because I have already read them. I read the first deposition; I have not read the supplementary depositions, but I can do that. You need not take up the time of the court here in reading that, unless there is some objections which counsel desire to urge.

Mr. MILLER.—We have the general objection that we made to all of this line of testimony, that neither Mr. Dike nor any of the parties except the defendant was authorized to make any representations of any kind.

The COURT.—I do not see how I can pass upon that until I go into the law of the case, and I will have to reserve my decision on that question until I have read the cases. I think we will make better time by admitting it subject to your objection

(Testimony of H. W. Furlong.)

than stopping now and urging the legal questions and thereby get through with the witnesses. [215]

**Deposition of U. L. Dike, for Plaintiff.**

U. L. DIKE, a witness called by the plaintiff, in his deposition given in New York City on the 11th day of May, 1915, testified as follows:

Interrogatory No. 1. What is your full name?

A. Uburto L. Dike.

Int. No. 2. Where do you reside? A. 601 West 160 Street, New York City.

Int. No. 3. During the months of September, October and November of the year 1911, where did you reside, and in what business were you engaged?

A. I resided in Sacramento, and I was engaged in the real estate business.

Int. No. 4. Were you connected with a corporation named and called the California Colonization Company during the months of September, October and November, and if so state the kind of business the corporation was engaged in? A. I was connected with the California Colonization Company during the months of September, October and November. The corporation was engaged in the real estate business.

Int. No. 5. If you were an officer of that corporation, state what office or offices you held?

A. I was the secretary-treasurer of the corporation.

Int. No. 6. Kindly give the names of all the officers of the corporation California Colonization Company, and state whether or not there were any other

(Deposition of U. L. Dike.)

members or stockholders of said corporation. A. The officers were: President, A. L. Crane, Vice-President, G. A. Greene, and myself secretary-treasurer. These three were stockholders. There were no other members of the corporation.

Int. No. 7. State whether or not you, as an officer of said [216] corporation, ever had any dealings with a Miss Isabelle Garwood and a certain gentleman known as Dr. F. I. Ramos. A. Yes.

Int. No. 8. If so, state briefly the nature of those dealings. A. The dealings were the purchase of a piece of real estate for the account of Miss Garwood at her request.

Int. No. 9. In what way, if you know, was F. I. Ramos connected with it? A. Miss Garwood stated that she had a friend who would arrive in a few days who would help her select the property. A few days after Mr. Crane had been showing Miss Garwood around the country, Mr. Ramos arrived, and from that time on he accompanied us in viewing properties shown to Miss Garwood.

Int. No. 10. If you state that you effected a sale of a piece of land in Sutter County to Miss Garwood, kindly state what your representations were to Miss Garwood in reference to the number of acres which the said land consisted of. A. We did effect a sale to Miss Garwood of a ranch belonging to Scheiber Bros., which we represented to contain six hundred acres, three hundred of which was in alfalfa, and the balance in pasture land.

Int. No. 11. If you say that you were the agent

(Deposition of U. L. Dike.)

in effecting the sale of the Scheiber Brothers land to Miss Isabelle Garwood, the plaintiff in this action, kindly state what your representations were in reference to whether or not said land was all level, and state what your representations [217] were as to what the said land was adapted to raising.

A. I was the agent for Scheiber Brothers in the sale to Miss Garwood and represented the said land to be level. We stated the land was adapted to raising alfalfa; that three hundred acres were in alfalfa and the balance being used for pasture, but most of it adapted to alfalfa.

Int. No. 12. Did you make any representations to said plaintiff in this action, Miss Isabelle Garwood in reference to what, if anything, was at that time growing upon said tract of land? A. Yes, we represented that there were three hundred acres of alfalfa growing upon the land.

Int. No. 13. If you state that a certain number of acres of said land was at that time planted to, and producing, alfalfa, what, if anything, did you tell her was the balance of the land used for? A. For pasture and most of it adapted to the growing of alfalfa.

Int. No. 14. Referring to the sale of this land to the plaintiff, Miss Garwood, did you or your corporation ever give any money to Mr. F. I. Ramos? A. We did.

Int. No. 15. If you answer the next preceding question in the affirmative, kindly state just why this was done. A. Because after selecting the land he



(Deposition of U. L. Dike.)

made the demand that he was to receive one-half of the commission or he would call the deal off.

Int. No. 16. If you answer Interrogatory Number Fourteen in the affirmative, kindly state just what [218] Dr. F. I. Ramos said in respect to his receiving money in the transaction.

A. He did not say anything to me, he fixed the deal up with Mr. Crane, and from what Mr. Crane told me, he said he could not spend his time for nothing, but must receive some compensation, and that unless he received one-half of the commission he would call the deal off.

Int. No. 17. Kindly state whether or not, in the month of July, or thereabouts, in the year 1912, in the city of Sacramento, State of California, in the presence of Mr. Bing C. Brier, the shorthand reporter, and Mr. Wm. H. Devlin, the attorney, and Miss Isabelle Garwood, the plaintiff in this action, after first taking the oath and being duly sworn to tell the truth, you gave your deposition in an action which was at that time pending in the State Court in Sutter County, in which said Miss Isabelle Garwood was the plaintiff and the Scheiber Brothers were the defendants. A. I do not remember the date, but I do remember testifying in the presence of the people mentioned, and in the action of Miss Isabelle Garwood against Scheiber Brothers.

Int. No. 18. If you answer interrogatory number seventeen in the affirmative, kindly state whether or not, at said time and place, in said deposition, the following questions were propounded to you by Mr.

(Deposition of U. L. Dike.)

Devlin, and whether or not the following answers were given by you: [219]

Q. (By Mr. DEVLIN.) By the way, you were paid by Scheiber Brothers for making the sale?

A. Yes, sir.

Q. Your company paid Mr. Ramos some money?

A. Yes, sir.

Q. How much? A. Fifteen hundred dollars.

Q. Out of your commission? A. Yes, sir.

Q. Why was that paid?

A. Because he demanded it; he wouldn't let the sale go through unless we paid him.

Q. What did he say about it? A. He couldn't come out there and work for his health; he would have to have something. A. To the best of my recollection those were the questions propounded and the answers given.

Int. No. 19. If you answer interrogatory number seventeen in the affirmative, kindly state whether or not at said time and place, in said deposition, the following questions were propounded to you by Mr. Devlin, and whether or not the following answers were given by you:

Q. (By Mr. DEVLIN.) You told her that there was six hundred acres in the place, didn't you?

A. Yes. Q. And then did you tell her anything about it all being level? A. Yes, it is level, yes, we agreed that it was level, yes.

Q. What did you tell her that the rest of the property was in after deducting the three hundred acres of alfalfa? A. Pasture.

(Deposition of U. L. Dike.)

Q. All pasture? A. Pasture, yes. A. To the [220] best of my recollection those questions were propounded and those answers were given by me.

Int. No. 20. Directing your attention to the testimony as quoted in interrogatories Nos. 18 and 19, will you kindly state whether or not, if such questions were asked of you and such answers were given by you, the above testimony as quoted is substantially correct, and, if it is not correct, in what particulars it is inaccurate? A. To the best of my recollection it is substantially correct.

Int. No. 21. Kindly state whether or not you had a written contract with the owners of the land in question for the sale of the said land, and in the event that you say that you did not have a written contract, kindly state just what authority you did have, or at least, what authority the California Colonization Company had for the sale of said land; and also kindly state whether or not the authority conferred upon you or the California Colonization Company was, after the sale, in any way confirmed or ratified? A. Before the organization of the California Colonization Company, I personally had a contract from the Scheiber Brothers for the sale of this land, and at the expiration of this contract a new contract for the sale of this land was given to the California Colonization Company which expired a short time before the ranch was shown to Miss Garwood, but after that we had a verbal agreement with Scheiber Bros, to show the ranch, and before the deal was completed, [221] had received writ-

(Deposition of U. L. Dike.)

ten authorization to make the sale, from Scheiber Brothers. The sale was confirmed and ratified by the Scheiber Brothers.

Int. No. 22. After the sale was effected, did the owners pay you or the said California Colonization Company the fee or commission previously agreed upon, provided there was a commission previously agreed upon, and, if so, what was the amount of the said fee or commission? A. They paid us commission which amounted to \$3,750. The commission was previously agreed upon.

#### ANSWERING CROSS-INTERROGATORIES.

Cross-interrogatories on Behalf of Defendants.  
(By Mr. HEWITT.)

Int. No. 11a. Did you and Miss Garwood and Mr. Ramos go to the Scheiber ranch before any contract of purchase was made between the Scheibers and Miss Garwood? A. Yes.

Int. No. 11b. How many times, if any, did you and Miss Garwood visit the ranch of Scheibers before any contract of purchase was made, if one was made? A. I cannot tell the exact number, but a number of times, three or four.

Int. No. 11c. How many times, if any, did you, Miss Garwood, and Mr. Ramos visit the ranch of Scheibers before any contract was made for the purchase thereof by Miss Garwood? A. I cannot tell the exact number, but a number of times, three or four.

Int. No. 11d. If you went to the ranch with Miss Garwood and Mr. Ramos before any contract of

(Deposition of U. L. Dike.)

purchase was [222] entered into between Miss Garwood and the Scheibers, what was the object of so doing?

A. That they might be fully satisfied with the condition of the ranch.

Int. No. 11e. If you went to the ranch with Miss Garwood and Mr. Ramos before any contract of purchase was entered into between Miss Garwood and the Scheibers, which parts of the ranch did you go over, if any, and how did you go over it? A. We drove around the road and through the fields in an automobile and then we walked over parts of it; parts which they wanted to examine more carefully.

Int. No. 11f. If you went to the ranch with Miss Garwood and Mr. Ramos, did you point out the boundary of same. A. Yes.

Int. No. 11g. If you went to the ranch with Miss Garwood and Mr. Ramos, state why you went, how many times you went, who was with you, the object of the visit or visits, and what was said, if anything, to Miss Garwood about the boundaries of the ranch, the acreage contained therein or the acreage planted to any particular products?

A. We went for the purpose of selling the property to her, a number of times, at least three or four times, with Miss Garwood, Mr. Ramos and the chauffeur. The object of the visits was to examine the ranch and satisfy them of its qualities and desirability as a dairy [223] ranch. About the boundaries, we drove along the line of the property where the roads followed the line and walked over to



(Deposition of U. L. Dike.)

the line in places where it left the road, and also pointed the boundary line by fences, levee and river boundary. We stated the acreage to be six hundred acres, three hundred acres planted to alfalfa and the balance pasture land, parts of which was adapted to alfalfa.

Int. No. 11h. If you effected a sale of the ranch to Miss Garwood, was it sold as a whole tract or by acre? A. It was sold as a whole tract containing six hundred acres.

Int. No. 11i. Had you or your company any written agreement with the Scheiber Brothers for the sale of the ranch? A. We had a written agreement which had expired just previous to showing the property to Miss Garwood.

Int. No. 11j. If not, what arrangements did you have with them concerning the sale? State such arrangements fully. A. We first called the Scheiber Brothers on the telephone and received from them authority to show the property on the same terms and conditions as set forth in the contract which had expired, and a short time before the deal was closed we received written authority. The arrangements of sale were that we should sell the property for \$75,000 or \$125 an acre, out of which we were to receive 5% commission.

Int. No. 11k. Did the Scheibers ever authorize you to sell the [224] ranch by the acre, and did you sell it by the acre? A. No, we sold it as a whole.

Int. No. 11l. In your conversation with Miss Garwood, did you refer to the ranch under any par-

(Deposition of U. L. Dike.)

ticular name, and if so what name? A. I did refer to it as Scheiber Brothers' Dairy Ranch.

Int. No. 11m. At any time that you visited the ranch with Miss Garwood, if you did so visit it, did you go on to the levee along or near the river? A. I went on to the levee, but Miss Garwood did not.

Int. No. 11n. Did you have any conversation with Miss Garwood on any of these visits to the ranch, if such visits were made, about the timber between the levee and the river and if so what was that conversation? A. I did. As we were just inside the levee I invited Miss Garwood to step on top of the levee that I might show her the timber land between the levee and the river, but she remarked that she could see it from the machine and that she did not care to climb up the side of the levee.

Int. No. 11o. In any of the visits to the ranch with Miss Garwood, did you go or drive near the levee, and if so for what distance? A. We drove along the foot of the levee I think each time we visited the ranch for almost the entire width of the west end of the ranch.

Int. No. 11p. When you visited the ranch with Miss Garwood, if you did so visit it, from what point did you approach it and what course did you follow after reaching it? A. Sometimes we would enter the ranch from the east side, other times from the northwest corner at the foot of the levee and from this point [225] we would continue either along the roads leading through the ranch or through the fields, both of which courses were taken frequently.

(Deposition of U. L. Dike.)

Int. No. 11q. In any of these visits to the ranch made by you and Miss Garwood, if such visits were made, did you point out to her the boundaries of the ranch and if so what did you mention as the boundaries? A. We did point out the boundaries and mentioned certain fences which constituted the south-east and north boundaries and the river bank representing the west boundary.

Int. No. 16a. If you ever met one F. I. Ramos state where, when and under what circumstances, A. I did meet Mr. Ramos in Sacramento at the office of our Company, California Colonization Co. He was brought there by Miss Garwood and introduced as her friend who would assist her in selecting some property which she might buy.

Int. No. 16b. Did you have any conversation with Miss Garwood concerning her business relations with F. I. Ramos, and if so what, where and in whose presence did such conversation take place, and what was the conversation? A. I had a conversation with Miss Garwood in the office of the California Colonization Company stating she had a friend who would assist her in selecting some property which she might buy, and he would arrive in a few days. She said he was her friend and she would rely very much on his judgment. This conversation was in the presence of the employees and Mr. A. L. Crane, president of our Company. [226]

Int. No. 16 c. If, to your knowledge, he acted for any person in the negotiations for the purchase of the Scheiber property, state for whom he so acted

(Deposition of U. L. Dike.)

and how you know he acted for such person or persons? A. Mr. Ramos acted in the purchase of the Scheiber Brothers ranch as the agent of Miss Garwood and my knowledge of this fact is that he demanded a portion of the commission received for making the sale.

Redirect Interrogatories on Behalf of Plaintiff.  
(By Mr. MACOMBER.)

Interrogatory No. 1. When did Ramos, if he ever did so, first speak about getting some money out of the deal for himself? A. After a deposit had been made by Miss Garwood for the purchase of the Scheiber Brothers' ranch.

Interrogatory No. 2. Did you at any time ever say or tell anything to Miss Garwood about money being paid to Dr. Ramos, and if so, what did you ever say to her about it? A. Yes, I did. I think after Dr. Ramos' death one day when she was in the office of the California Colonization Company accusing me of making a large amount out of the sale when I told her that \$1500 of the commission we should have received was paid to Mr. Ramos, and that she had received that through his estate.

Interrogatory No. 2a. If you say that the California Colonization [227] Company did give a part of its commission to Dr. Ramos, and if you say that you did not say anything to Miss Garwood about it, what was the reason or object why this knowledge was kept from her? A. There was no reason for keeping the knowledge from her, except the usual reason that agents do not discuss division

(Deposition of U. L. Dike.)

of commissions with principals.

Interrogatory No. 3. Did the California Colonization Company ever have any understanding or agreement with Dr. F. I. Ramos to the effect that said F. I. Ramos would receive some money out of the commission received by said California Colonization Company for selling said or any land? A. No, not until after the deposit was made.

Interrogatory No. 4. Can you, as an officer of said California Colonization Company state whether or not any officer of said California Colonization Company either on behalf of said corporation or as an individual ever agreed to give any money to F. I. Ramos? A. Mr. A. L. Crane, president of the Company agreed after the deposit was made for the Scheiber Brothers' Ranch.

Interrogatory No. 5. Was the sharing of any commission for the sale of any real estate, with F. I. Ramos, or the giving of any money, for any purpose, to F. I. Ramos, ever discussed, or talked about by you or any other officer of the California Colonization Company? A. It was talked [228] over a good deal between the officers of the Company.

Interrogatory No. 6. Can you, as an officer of the California Colonization Company, state whether or not that corporation, by and through its officers, ever, at any time, decided to give said F. I. Ramos any part of its commission for the sale of real property? A. It did decide to give Mr. Ramos a part of the commission.

Interrogatory No. 7. If you answer Interroga-



(Deposition of U. L. Dike.)

tory No. 6. in the affirmative, kindly state just when and where this decision took place, and by and through what officers it was made? A. It took place after the deposit was made and it was made through Mr. Crane, the president, at the office of the company.

Interrogatory No. 8. Did you, as an officer of said California Colonization, ever agree with any other officer of said California Colonization Company that said California Colonization Company should pay any money to F. I. Ramos or share with said F. I. Ramos any commission for the sale of any real estate? A. I did.

Interrogatory No. 9. If you answer the next preceeding question in the affirmative, kindly state when this agreement took place, and also state what was said by and between you and the other officers at the time, and also state whether or not said agreement or understanding was ever carried out or acted upon by said California Colonization Company?

A. The agreement took place in [229] the offices of the company after the deposit had been made by Miss Garwood, between the president, and myself.

While I cannot give the exact discussion, the substance was an agreement to pay Mr. Ramos one-half of the net commission received, which after the deal was closed was carried out by the payment to Mr. Ramos of \$1500.

Interrogatory No. 10. If you should state that the California Colonization Company ever actually paid any money to F. I. Ramos, kindly state whether

(Deposition of U. L. Dike.)

or not it was a part of commission money, for the sale of real estate, and, if so, what sale, that particular commission was derived from? A. We did pay Mr. Ramos a part of the commission received from the sale of the Scheiber Brothers' Ranch to Miss Garwood.

Interrogatory No. 11. If you state that the California Colonization Company paid to F. I. Ramos a portion of the commission received by said corporation for the sale of the land of the Scheibers in Sutter County to Miss Garwood, then kindly state just how long it was before the sale was agreed upon that the California Colonization Company agreed with F. I. Ramos to share the commission with him. A. It was after the sale after the deposit had been made.

Interrogatory No. 12. If you should state that Miss Garwood agreed [230] to take the land, and put up the deposit on or about Monday the 25th day of September, 1911, then kindly state about how many days it was before that time that the California Colonization Company made the agreement to share the commission with F. I. Ramos, —if it ever did make such an agreement? A. It was after that date, I think, a day or two.

Interrogatory No. 13. Referring to interrogatory number seventeen, in the list of interrogatories on your direct examination by me, did you or did you not, at the time and place referred to in said interrogatory number seventeen, give the following testimony, that is, were, or were not, the following ques-

(Deposition of U. L. Dike.)

tions propounded to you, and did you, or did you not, give the following answers:

Q. (By Mr. DEVLIN.) When did he first ask you for money? A. He never asked me for money at all. Q. Whom did he ask? A. Mr. Crane. Q. And did Mr. Crane tell you about it? Did he ever talk to you about money? A. Yes. Q. What did he say to you? A. He said that he gave Mr. Ramos a statement of the acres and that he would divide the commission with him. Q. (Mr. DEVLIN.) For what? A. If they bought the property. Q. You knew Miss Garwood was buying the property, didn't you? A. We supposed she was. [231]

Q. Don't you know that you made a contract with her? A. Yes, but that was later. That was not at this time. That was later. That wasn't the time we made the agreement with Doctor Ramos.

Q. Miss Garwood came to you alone first? A. She reported that she had a friend coming, and she didn't want to do anything until her friend came to advise her.

Q. She told you Ramos was her friend and she wanted advice? A. Yes. Q. Wanted him to advise her, is that the idea?

A. Yes. Q. When did Ramos first speak about getting some money? When did you learn it?

A. It was soon after the negotiations opened.

Q. When was that?

A. I do not know as to that, I know Mr. Crane came and told us that he made an agreement with him to divide the commission.

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A. To the best of my recollection the questions were propounded to me and I did give those answers.

Interrogatory No. 14. If you say that you gave the foregoing testimony, then who do you refer to in the answer to the last question just hereinabove set forth, when you said that Mr. Crane came and told "us," who did you mean by "us"?

A. Mr. Greene and myself.

Interrogatory No. 15. If you answer direct interrogatory number seventeen in the affirmative, kindly [232] state whether or not, at said time and place, the following questions were asked of you by Mr. Devlin, and the following answers given by you?

Q. Did you tell Miss Garwood Ramos wanted fifteen hundred dollars, and you agreed to give him fifteen hundred dollars? A. No, sir.

A. Yes, as nearly as I can recollect, the said question was asked and the said answer given by me. [233]

Upon further examination upon interrogatories direct and cross-propounded by the respective parties, the said U. L. Dike testified as follows:

Direct Interrogatories on Behalf of Plaintiff.

Interrogatory No. 1. What is your full name? You are the Mr. U. L. Dike who gave your deposition in this action on the 11th day of last month?

Answer No. L. Uburto L. Dike. I am the Mr. U. L. Dike who gave the deposition in this action on the 11th day of May, 1915.

Interrogatory No. 2. I wish to call your attention

(Deposition of U. L. Dike.)

to certain testimony which you gave in your deposition before Notary Public Moses Cohen in this action on the 11th day of May last. I will quote from the deposition as follows:

Interrogatory No. 13: Referring to interrogatory No. 17 in the list of interrogatories on your direct examination by me did you or did you not, at the time and place referred to in said interrogatory number seventeen give the following testimony, that is, were, or were not, the following questions propounded to you, and did you, or did you not, give the following answers: Question. (By Mr. Devlin.)—When did he first ask you for money? A. He never asked me for money at all. Q. Whom did he ask? A. Mr. Crane. Q. And did Mr. Crane tell you about it? Did he ever talk to you about money? A. Yes. Q. What did he say to you? A. He said that he gave Mr. Ramos a statement of the [234] acres, and that he would divide the commission with him. Q. (Mr. DEVLIN.) For what? A. If they bought the property. Q. You knew Miss Garwood was buying the property, didn't you? A. We supposed she was. Q. Don't you know that you made a contract with her? A. Yes, but that was later. That was not at this time. That was later. That wasn't the time we made the agreement with Dr. Ramos. Q. Miss Garwood came to you alone first? A. She reported that she had a friend coming, and she didn't want to do anything until her friend came to advise her. Q. She told you Ramos was her friend and she wanted advice? A. Yes. Q. Wanted him to advise her, is that the idea?



(Deposition of U. L. Dike.)

A. Yes. Q. When did Ramos first speak about getting some money? When did you learn it? A. It was soon after the negotiations opened. Q. When was that? A. I do not know as to that; I know Mr. Crane came and told us that he made an agreement with him to divide the commission.

A. (Given by Mr. U. L. Dike in his deposition on or about May 11th, 1915, in response to the question as to whether or not he had given the foregoing testimony.) To the best of my recollection the questions were propounded to me and I did give those answers.

Answer No. 2. The said questions were propounded to me and [235] I did give those answers.

Interrogatory No. 3. I would like to ask you at this time, Mr. Dike, to state whether or not the foregoing testimony which you state in your last deposition you gave in response to questions propounded to you in Sacramento by Mr. Devlin is substantially correct; is that testimony in any way untrue, or incorrect?

Answer No. 3. Not that I know of. It is substantially correct.

Interrogatory No. 4. If you will carefully consult your memory, Mr. Dike, will you not state that you may be mistaken when you say that the agreement which the officers, as such, of the California Colonization Company, made with Dr. F. I. Ramos, to give him one-half of the Company's commission was made after the deposit was put up by Miss Garwood?

Answer No. 4. So far as I know, the agreement

(Deposition of U. L. Dike.)

to divide the commission with Dr. F. I. Ramos may have been made with Mr. Crane, the president of the California Colonization Company, before the deposit was put up by Miss Garwood. What I desire to make clear is that the first time I knew about any agreement to divide commission with Dr. Ramos was after the deposit was put up by Miss Garwood when I learned of it from Mr. Crane.

Interrogatory No. 5. If Dr. Ramos refused to allow the sale to go through until he was paid his share of the commission, is it not the fact that he [236] enforced his demand before allowing Miss Garwood to put up the deposit of five thousand dollars?

Answer No. 5. I don't know. The arrangement to divide commission was made between Mr. Crane and Dr. Ramos without my knowledge. Whether Mr. Crane made the arrangement before the deposit was made by Miss Garwood or afterward I don't know. I do know that the deposit had already been made by Miss Garwood when Mr. Crane told me of the arrangement to share commission with Dr. Ramos.

Interrogatory No. 6. If you feel sure that there had been no negotiations with Ramos, or between Dr. Ramos and the Company until after the deposit was paid, will you kindly explain fully just how and in what manner Ramos proposed or threatened to compel the California Colonization Company to pay him the money?

Answer No. 6. I am not sure that there had not been any negotiations with Dr. Ramos until after the

(Deposition of U. L. Dike.)

deposit was made. I have already explained in my previous answers just when I learned of the arrangement with Dr. Ramos. Dr. Ramos never made any threats to me. I don't know what he said to Mr. Crane which led Mr. Crane to make the arrangement with Dr. Ramos.

Interrogatory No. 7. If there had been no negotiations with F. I. Ramos as to his receiving one-half of the commission until the deposit was put up, then you had five thousand dollars in your possession, and the contract signed, didn't you? [237]

Answer No. 7. At the time, I received the \$5,000 deposit and when it came into my possession I knew nothing at all that negotiations had been made to divide the commission with Dr. Ramos.

Interrogatory No. 8. If the deal was signed and agreed upon and the bargain secured by the deposit by Miss Garwood of five thousand dollars, then why was it necessary to split the commission with F. I. Ramos? Kindly explain this matter, by stating fully and exactly just what was said by Ramos and by you and each of you, state everything that was said about the matter by you and by Mr. Crane, and by Mr. Green and by Mr. F. I. Ramos.

Answer No. 8. It wasn't necessary except that Mr. Crane had agreed to give him one-half of the commission as I have already stated. Mr. Greene didn't take any part in the negotiations at all, he being out of the city. When Mr. Crane told me of the agreement to divide the commission with Dr. Ramos I protested and I objected. Then Dr. Ramos

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showed me a card signed by Mr. Crane, the president of the company, agreeing to give Dr. Ramos one-half of the commission and when he showed me the card I consented. I don't know when this card was signed by Mr. Crane.

Interrogatory No. 9. Is it not a fact, Mr. Dike, that at the same moment Dr. F. I. Ramos handed over [238] the check for the five thousand dollars for the deposit, a check for fifteen hundred dollars payable to F. I. Ramos was handed to said F. I. Ramos, and is it not a fact that Miss Garwood was not present at the time. Kindly answer this question fully and explicitly.

Answer No. 9. No, it is not a fact. Check paid to Dr. Ramos was not until the deal was closed and we had received our commission for negotiations of the sale from Scheiber Bros.

Interrogatory No. 10. Can you at this time state, Mr. Dike, the day and month and the year that the deposit was put up by Miss Garwood?

Answer No. 10. I cannot.

Interrogatory No. 11. Can you at this time state, Mr. Dike, the day and month and the year that the agreement was made between the California Colonization Company and Dr. F. I. Ramos to the effect that said Ramos was to share in the commission?

Answer No. 11. I cannot.

Interrogatory No. 12. If you can fix those dates in your mind, kindly explain just how you do it?

Answer No. 12. I cannot.

Interrogatory No. 13. If you are not able to ex-

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plain how you fix those dates in your mind, will you then kindly explain just how you remember that the negotiations with Ramos for the sharing of the commission were not commenced until after the deposit was put up?

Answer No. 13. I am not able to fix the dates, and I have already answered that I do not know whether [239] the negotiations with Ramos for sharing the commission were commenced before or after the deposit was put up because Mr. Crane did all the negotiating, not I.

Interrogatory No. 14. Will you kindly state what person it was that personally handed over the deposit of five thousand dollars? Was it Dr. Ramos, or was it Miss Garwood? If it was Dr. Ramos, was Miss Garwood present at the time?

Answer No. 14. Miss Garwood made out the check and gave it to me in Dr. Ramos's presence in the office of the California Colonization Co.

Interrogatory No. 15. I would like to ask you, Mr. Dike, what, if anything, you said to Miss Garwood at the time you were making the sale, about the amount of alfalfa that the land would produce. Kindly state what you said to Miss Garwood about the number of acres in the land, and the number of cuttings of alfalfa that could be taken from the land each year, and the number of tons of alfalfa, which each acre would produce a year.

Answer No. 15. To the best of my knowledge I told Miss Garwood that the ranch had about 300 acres of alfalfa and that it would produce five or six



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cuttings to the year and cut from eight to ten tons to the acre each season.

Interrogatory No. 16. Kindly state, Mr. Dike, whether or not, in the month of July, or thereabouts, in the year 1912, in the city of Sacramento, State of California, in the presence of Mr. Bing [240] C. Brier, the shorthand reporter, and Mr. Wm. H. Devlin, the attorney, and Miss Isabelle Garwood, the plaintiff in this action, after first taking the oath and being duly sworn to tell the truth, you gave your deposition in an action which was at that time pending in the State Court in Sutter County in which said Miss Isabelle Garwood was the plaintiff and the Scheiber Brothers were the defendants.

Answer No. 16. I did.

Interrogatory No. 17. If you answer interrogatory No. 16, just above propounded to you, will you kindly state whether or not, at said time and place, in said deposition you gave the following testimony.

Q. What was the conversation about the ranch?

A. I told her the ranch was a dairy ranch and spoke of the alfalfa, that there was three hundred acres of alfalfa. Q. Did you say anything about the number of crops per season of alfalfa it produced? A. Yes.

Q. What did you say about it? A. Five and six cuttings in the year. And cut from eight to ten tons to the acre each season.

Answer No. 17. To the best of my memory and belief I gave said testimony.

Interrogatory No. 18. If you should state that you did give the testimony just read to you, in interroga-

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tory No. 17, will you kindly state whether [241] or not said testimony is in all respects the truth, that is, is it true that you told her that the land was six hundred acres, and that it cut five or six cuttings a year, and that it cut eight to ten tons to the acre, per season?

Answer No. 18. Said testimony is in all respects true, but the question assumes that I testified there were 600 acres of alfalfa. I did not so testify. I testified that there were 600 acres in the ranch and that there were 300 acres planted to alfalfa.

Cross-Interrogatories Proposed by Defendants.

15-a. Did you at any time or place ever represent to Miss Garwood that the land, (Scheiber Ranch) contained exactly six hundred acres?

A. 15-a. No, I said 600 acres more or less.

15-b. Did you at any time or place represent to Miss Garwood that there were exactly three hundred acres of alfalfa?

A. 15-b. No, I said there were about 300 acres of alfalfa.

15-c. Have you in any deposition made by you at any time or place intended to say that in your transactions with Miss Garwood concerning the sale of the Scheiber property there were exactly six hundred acres of land in the Scheiber ranch?

A. 15-c. No.

15-d. Have you in any deposition made by you at any time or place intended to say that, in your transactions with Miss Garwood concerning the sale of the Scheiber property there were exactly three

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hundred acres of alfalfa growing on the Scheiber ranch at the time of such transactions? [242]

A. 15d. No.

15e. In your negotiations with Miss Garwood for the sale of the Scheiber property did you show her the alfalfa fields, and if so, did you say to her unqualifiedly that there were three hundred acres in alfalfa.

A. 15e. I did show her the alfalfa field but I didn't state to her unqualifiedly that there were 300 acres in alfalfa. I said there were about 300 acres.

15f. In your negotiations with Miss Garwood for the sale of the Scheiber property did you show her the boundaries of the ranch, and if so, did you say to her unqualifiedly that the ranch contained six hundred acres of the land.

A. 15f. I showed her the boundaries, but I didn't tell her unqualifiedly that the ranch contained six hundred acres of land; I said more or less. [243]

Mr. MACOMBER.—That is our case, if your Honor please.

The COURT.—Call the first witness for the defendants.

Mr. HEWITT.—I understand that these depositions have gone in subject to the objection?

The COURT.—Yes.

Mr. HEWITT.—If your Honor please, I desire to make a motion at this time. Defendants at this point move for a judgment or nonsuit and dismissal of the action against defendants and each of them on the following grounds:

(Deposition of U. L. Dike.)

First, that plaintiff has failed to show or establish by any evidence offered by her that she has been damaged to any extent by the purchase of the property described in the complaints herein at the price paid by her therefor, or in any manner or at all;

Secondly, that plaintiff has failed to show or establish by any evidence offered by her that she was defrauded in the purchase of the property described in the complaints herein, in any manner or to any extent.

Third, that plaintiff has failed to show or establish by any evidence offered by her that any material misrepresentations respecting the property sold to her by the defendants herein and described in her complaint were ever made to her by said defendants or either thereof.

Fourth, that plaintiff has failed to show or establish by any evidence offered by her that the property described in her complaints herein was in valuation at the time of her purchase worth any sum less than the amounts paid by her therefor. [244]

Fifth, that plaintiff has offered no evidence proving or tending to prove that in the purchase of the property described in her complaints herein she relied upon the representations of defendants or either of them, but on the contrary the evidence shows that she purchased said property and all thereof after a personal examination and inspection of the same by herself and her agent F. I. Ramos.

Sixth, that it does not appear from any evidence offered by plaintiff that she relied upon or that she had

(Deposition of U. L. Dike.)

a right to rely upon any representations made by the California Colonization Company or any agent of said company, in the purchase of the property described in her complaints herein, or that said company or any officer or agent of said company had authority from the defendant to make any representations concerning said property or any part or portion thereof.

Seventh, that plaintiff has offered no evidence showing or tending to show that the California Colonization Company, or any officer or agent of said company were the agents of defendants in the sale to her of the property described in the complaint herein, but on the contrary it appears from the evidence that all contracts for the sale of said property were made directly between plaintiff and defendants, and that the only offices performed by said California Colonization Company and its officers were in finding a purchaser of said property in the person of plaintiff upon the consideration and terms expressed in the written contract for the sale thereof, entered into between plaintiff and defendant on the 27th of September, 1911, and the deed made and delivered by defendants to plaintiff pursuant to said contract on the first day of November, 1911. [245]

Eighth, that plaintiff has offered no evidence showing or tending to show any fraudulent transactions between plaintiff or any agent of plaintiff and these defendants; that it has not been established that the defendants, or any of them, had any knowledge whatever of any fraudulent acts, if such they were, per-



(Deposition of U. L. Dike.)

formed by F. I. Ramos, the agent of plaintiff, in the transactions alleged in the complaints herein.

Ninth, that it has not been shown or proven by any testimony offered in the case before the court that any representations were ever made to plaintiff by defendants with the intent to deceive or mislead her in the matter of the purchase of the property described in her complaints.

The COURT.—Now, it is necessary for me to read the supplementary deposition of Mr. Dike before I can be prepared to hear this motion; I do not feel that I can hear it until I have heard all the testimony offered by the plaintiff. I will take this matter up when court reconvenes at say half-past two, because I want to have time to carefully read that supplemental deposition.

(A recess was here taken until two P. M.)

Mr. MACOMBER.—There are two photographs that I would like to introduce, your Honor, those two photographs identified by Mr. Furlong.

The COURT.—The photographs that I have already examined?

Mr. MACOMBER.—Yes. In reference to these depositions—these depositions have not been offered in evidence yet formally.

The COURT.—The understanding was they would be received subject to the defendant's objection.

Mr. HEWITT.—I wish to add one additional ground to the motion for a nonsuit, numbered ten, that it appears from the [246] evidence in these cases that all contracts relating to the sale of the prop-

(Deposition of U. L. Dike.)

erty described in the complaints herein were written contracts, and they are presumed to have contained all agreements and warranties with reference to the condition or quality of said property.

The COURT.—Did you object to the testimony on that ground?

Mr. HEWITT.—In some instances, your Honor.

The COURT.—I remember that you did in one or two instances, but I did not understand you to object to all the conversations with reference to the acreage and quality of the ground. Of course, the record will show.

Mr. HEWITT.—I could not say with respect to that; probably the rule would be that even if I had so objected, that the court could go to the foundation of the matter.

The COURT.—If there were fraud in the transaction.

Mr. HEWITT.—Yes; but as to some matters the objection was made.

(Thereupon, counsel proceeded to the argument of the nonsuit, at the conclusion of which the following proceedings were had.)

The COURT.—I think you had better put in the testimony and let me take the whole case, that is, when it is submitted, because if I were to stop now to read these authorities, as I must do before I ruled on this question, we would not get through. I think it would be an injustice to either side not to read them. The motion will be denied.

Mr. MILLER.—Exception.

## TESTIMONY FOR THE DEFENSE.

**Testimony of Charles F. Silva, for Defendants.**

CHARLES F. SILVA, called for the defendants, testified as follows: [247]

My name is Charles F. Silva. I reside in Sacramento. I am a butcher and farmer by occupation. I own real property. In the year 1910 I owned property within six miles of the Scheiber Brothers' ranch. I have frequently bought and sold land similar to this. I know well the ranch that was sold to Miss Garwood. I have known that ranch for about 32 or 33 years. I farmed it some; I have cut a good deal of hay on it. I have known it very well for years; I have pastured stock on it and cut hay on it. I have had a great deal of experience in buying and selling land similar to this. Some of it in that neighborhood, yes, some about 6 miles from there, about the same kind of land. A small tract on the same side of the river, and a large tract across the other side. I have had a great deal of experience in buying and selling stock. I bought stock everywhere, clear down into Mexico.

The COURT.—You need not go into the question with reference to the purchase of the personal property; I do not think the testimony is sufficient to show that they are entitled to recover anything on their claim that they were deceived with reference to the personal property. I think the principle involved with reference to that matter is so clearly settled that you need not waste the time of the Court in going into it unless you desire to do so.

Mr. MILLER.—If your Honor is going to grant a

(Testimony of Charles F. Silva.)

nonsuit in that case, we will submit that case.

The COURT.—I hold that plaintiff is not entitled to recover as to the personal property.

Mr. HEWITT.—And the other case, if your Honor please—I don't know just exactly what the custom is in this court, but did I understand that the motion for a nonsuit was either denied or taken under advisement for some future action?

The COURT.—It was denied. [248]

Mr. HEWITT.—I wish an exception to be noted to the ruling.

The COURT.—I said that when I came to decide the entire case, that I might, after I had examined all of the authorities, come to the conclusion that I should grant this motion, but that is my view of the rule at the present time.

Mr. MACOMBER.—As long as exceptions are in order, if it is the proper time, I will except to the Court's ruling with respect to the personal property.

The COURT.—There has been no motion made in that case, as I understand it.

Mr. MILLER.—Didn't your Honor understand the motion read in both cases?

The COURT.—No.

Mr. MILLER.—It was to apply to both cases.

The COURT.—I grant the motion as to the case involving the personal property and deny it in the other case.

Mr. MACOMBER.—We will note an exception to the personal property case ruling.

The WITNESS.—I am pretty sure that it was in

(Testimony of Charles F. Silva.)

1911 that I went to the ranch with this lady sitting here, I can't remember her by name. It was after the purchase of the property. A man by the name of Harvey, I can't give his initials, an automobile man, asked me to go with him and her to the ranch, and I did. I went over the property with her; with the lady that was sitting there, I cannot call her by name. I am now familiar with the character and condition of that property on the first day of November, 1911, and before that, and since. At that time the new levee was not constructed. I was familiar with the location of the old levee. I was thoroughly acquainted with the fact that some of the property [249] laid between the old levee and the Feather River, and to some extent up along the curve in the river. I know all about the former condition of the property, and its present condition. I have hunted all through that country.

Q. Now, Mr. Silva, do you know what the market value of that real property, the Scheiber Brothers ranch, bought by Miss Garwood, was on the first of November, 1911?

Mr. MACOMBER.—One moment. What do you refer to, the entire land?

Mr. MILLER.—Yes.

Mr. MACOMBER.—You ask him if he knew?

A. Yes, I do.

Mr. MILLER.—What was the market value?

Mr. MACOMBER.—We object to the question; we object to any testimony being taken as to the ranch in its entirety upon the ground that it is incompetent,



(Testimony of Charles F. Silva.)

immaterial and irrelevant, and not within the issues of this case, and has nothing to do with this controversy.

The COURT.—The objection is overruled.

Mr. MACOMBER.—We note an exception.

### EXCEPTION NO. 3.

In a conversation that I had with the lady, she was complaining to me about the property, and I said to her, after going over the ranch and going home, "If you want to dispose of this property I will give you what it cost you." She said she would let me know the next following day. The next day I met her at the Sacramento Hotel, and she said no, she would not. The market value of that land at that time was \$75,000. Yes, I had a conversation with the plaintiff on that occasion in which the question of the value of the land and what I would pay for it came up—\$75,000 was what I offered for it.

Mr. MILLER.—Q. Mr. Silva, did you on the occasion of the visit to the ranch with Miss Garwood, shortly after her purchase [250] of the Scheiber property, offer to pay her \$75,000 for that ranch?

Mr. MACOMBER.—We object to the question on the ground it is immaterial, irrelevant and incompetent.

The COURT.—The objection is overruled.

Mr. MACOMBER.—Exception.

### EXCEPTION NO. 4.

A. Yes. I could not recall when that was, it was sometime after she bought the property, maybe three

(Testimony of Charles F. Silva.)

or four months, maybe five months, maybe six months, I could not recall. It was merely drawn to my attention, and I went up there and looked at the ranch. I know the ranch very well. I had been knowing the ranch for 37 years. I was absolutely in earnest in making that offer. I was absolutely prepared financially to do it, to take the property, yes, to pay her the cash. I never make offers without I am prepared to take them up. The lady was very much worked up over the property. I would like to have it very much.

Cross-examination.

Yes, absolutely in my opinion, the ranch was worth \$75,000. Yes, I do know all about real estate in that neighborhood. Yes, absolutely I know all about soils. I do absolutely know what good alfalfa is, and I know what bad alfalfa land is. That is my business, alfalfa lands. I know the number of tons per acre that good alfalfa land will produce. I know the number of cuttings a year that you would get off an acre of good alfalfa land. I am familiar with where that long strip of land comes up to Nicolaus, and how far it runs along the river. I know how far out it goes from the river. I have been in that neighborhood about 37 years. I was familiar with that land when Bill Regan had it. I was familiar with that land for the last 32 years. I am familiar with a good many of the sales that have taken place in those years—not all of them. I know the sales that have taken place of recent [251] years. I know what has been paid for land there. For that reason I am absolutely competent to tell what that land is worth. Good

(Testimony of Charles F. Silva.)

alfalfa land along there is worth \$250 an acre. That is what it is worth now. That is what it was worth in 1911; about the same thing, it has been for some time good alfalfa land. Any land that will produce 5 or 6 crops of alfalfa is worth that much money; that is about 10 tons per acre per year; some 12, some 8, some less it is according to the kind of land you have. Very big yield; yes, 12 or 10 tons to the acre, 12 tons is a pretty big yield. 10 tons is a fair yield. Yes, it is \$250 an acre for subirrigated land. Most any of that land on that ranch is worth from \$100, \$125 to \$150. Most any land that will raise crops of barley, or raise crops of wheat, or anything like that. You know there is a division there on that land; that is, 2 different parts of land there, that is inside of the old levee. Not all of that land is worth \$250 an acre, I said some of it. Yes, I am familiar with the various parcels along there,—the Redfield farm, and the Claus Peters place. I know how far the subirrigation goes out from the river. That land outside of where the subirrigation is is very good land. There is some adobe, not a great deal; then there is spots of alkali on some of it, and the other is very good land; it is a mixture of land after you get the other way, in some ranches, not all the ranches. You can raise lots of alfalfa on adobe land when you put water on it, you have got to irrigate it. Yes, land that is subject to overflow will raise alfalfa. If the water is on it for a little while, it will kill it. Sometimes it don't take long to kill it; and other times it does; it depends upon how the water is; if the water is cold,

(Testimony of Charles F. Silva.)

it will take longer; if the water is warm, it will kill it within 24 hours, if the water is hot. If the weather is cold, it will sometimes take 10 or 12 days to kill it. That adobe land that you have to irrigate, will produce alfalfa if you irrigate it. It will not produce alfalfa without irrigation. That land you have to irrigate up there, that adobe land is worth [252] about \$75 or \$80 or \$100 an acre; most any land in that vicinity; I don't care where you go, is worth that amount of money, and has been for several years. In 1911 first-class alfalfa land along there was worth \$250 an acre. I bought some myself for \$250 an acre right there, just below, about 6 miles. They call it the Ramsey place,—not at that time, but before that. About 4 or 5 years before that, it was called the Ramsey place, below that, 160 acres. I bought 165 acres. It is about 5 or 6 miles from Nicolaus. It is right along the river bank, the same as any other land. I have not owned it for that long; it was longer ago when I bought that; I sold it 6 or 7 years ago. I bought it from a man by the name of Ramsey. It is this land which is marked the land of R. H. Shields; Shields bought it from a man by the name of Mahon. I owned it before him, quite a while ago; it is several years ago. Q. You paid \$250 an acre for it? A. I did. Q. Don't you know that Robert Sheilds paid \$100 an acre for that land? A. I can't help it what he paid. I know what I paid. Part of the land cost me \$250 an acre, and part of it did not. Q. Don't you know as a matter of fact that Rob. Shields got that land for \$100 an acre? A. I don't care what he



(Testimony of Charles F. Silva.)

got it for. Q. Don't you know that he did? A. I don't care what he got it for; I know what I paid. I don't know it; I don't know what he paid. I want to say to you, young man, right here now, that you can take a lot of these ranches down there that are not worth \$4 an acre, part of them, you understand; this ranch that you are talking about here, that I know I offered them \$75,000 for, and I know what land is worth. Yes, I know where the Saylor place is. It is right back below the Nicolaus ranch. Yes, right between the Nicolaus ranch, and the levee. I don't know how long Saylor has been there. I don't know when he bought the place. I do not know that Saylor paid \$100 an acre for that land 2 years before the plaintiff bought [253] this land of her's. There is a big difference between the Saylor land and the Nicolaus ranch. The Nicolaus ranch is considered to be the best piece of property in that vicinity, if you want me to tell you, the very best piece of property in that vicinity, the Nicolaus ranch is. You take some place right around there, the O'Keefe place, the Drescher place, all those places in there, but as you go down this way, the land is not as good as it is in that vicinity; you take the Claus Peter's place, that isn't worth that much; there is a lot of land that isn't, because you get into alkali. There is very little alkali on the Garwood place, one or two small spots in there; it is adobe, more; it looks like alkali, but it is more adobe. It is back of the road, the road divides that property into two. I mean it is down here in that quarter section, there is



(Testimony of Charles F. Silva.)

a road that divides that ranch in two, it is back of that road, a couple of spots there may be. In the southernmost portion of the ranch. There is not any alkali any other place on that ranch; I know there is not, because I have hayed all over that ranch. The Saylor place don't lay between the river and the Garwood ranch, it does not. Some of the Saylor place is far inferior to the Garwood place, and some of it is as good. I don't know what was paid for the Saylor place. Yes, the offer I made of \$75,000 for the ranch was made in good faith absolutely, I had the money. I have always been a good business man. I know the land values in that neighborhood. It is absolutely true that in making that woman an offer to buy that place at that time for \$75,000, I made the offer without knowing what the Saylor place sold for. I don't have to know what the other land is sold for. I know the Valley place; that is good land. Some of it is as good land as the Garwood place. It is as good land as the Garwood place. I know of its being sold, yes. I don't remember what it [254] was sold for, but I think \$150. Yes, I know that that and was put up for sale by the Probate Court of Butte County, and the highest bid given for that and was \$69 an acre. It was done just to cheat these heirs out of it, that is what it was done for. I did not buy the Valley land, because the title was not exactly right; there was quite a mix-up in that; that was the matter with that. Yes, I am sure about that title; there was considerable trouble about the title of the property. I don't know anything about what

(Testimony of Charles F. Silva.)

was said, I know the title was not perfect; it had to be made good, that is why it sold so much cheaper. I am thoroughly acquainted with land there, I know the people, know the heirs of that little piece of property, and it is a good little piece of property. No, it is not better than the Garwood place. I would like to be away from that town a little further, instead of being closer. I do not know that some of the heirs wanted to hold the land, and went into court, and had the Court order the land appraised, and that the highest appraisement was \$125 an acre for that land. I do not know that, I know what real estate is worth in that vicinity. Yes, I do absolutely. I do not remember anything about what that land was sold for. I am pretty sure that it was the year before she bought her land. I don't know that after hearing the testimony of the witness that the land was worth \$135 an acre, the Court refused to sign the order selling it for \$69 an acre, and that thereafter the heirs got together and sold the land for \$100 an acre. No, I don't know that. The Redfield farm, that is right along side, lying on the northwest boundary line of the Garwood place, it is very good land. It is about the same quality as the Garwood land. I remember the deal in 1901, only ten years before plaintiff bought this land, that land was sold by Redfield to the Scheiber Brothers for less than \$50 an acre. Yes, in 10 years' time land has increased in value from [255] \$50 an acre to \$250 an acre; yes, absolutely in that neighborhood, absolutely all over the State, practically, land has increased that much in value.

(Testimony of Charles F. Silva.)

The reclamation has been the cause of that increase. Reclamation has increased the value of that land up in there; before we had reclamation, that was flooded; since it has been reclaimed, it has increased the value of all the lands, all the bottom lands. The reclamation work was done to take care of the flood waters that came from these levees and ditches, and all such as that. Yes, all of this property in here, in District 1001, was assessed for that reclamation work. All that land was assessed inside the district. The Garwood land has been assessed for years for levee purposes. I do not know how much the assessment was on the Garwood place for that reclamation work. The good that the reclamation work did to this Garwood place was that it helped to keep water away from the back field, so that you could produce barley or alfalfa, or anything else. In a way you could produce these things before the reclamation work, but use it one year, you might have success in raising alfalfa one year and then lose it in the next. On part of that land it would not be a commercially practicable proposition to raise crops before the reclamation work was done, due to overflow. Most of the Garwood place, from the road back, I think probably 150 to 200 acres, more or less, was subject to overflow. I am not familiar with the contour lines up there. I know Mr. Borgman, and I know his property, that property is worth \$125 to \$150 an acre. It may be true that that land was sold for \$55 an acre five years ago, but the land is worth a great deal more within the last 3 or 4 years, since the reclama-

(Testimony of Charles F. Silva.)

tion work. I figure that there are 200 acres on that ranch worth \$250 an acre. That land is right along the road, straight back, around the buildings, the land that always has been in alfalfa, more or less. Yes, this part up near the levee. The remaining [256] part down toward the southeasterly corner is worth \$100, around there, more or less; that is, from the \$250 land down to the end, that is worth \$100 an acre. When I offered her \$75,000 for the place, I was taking the place as a whole when I offered that money. I have been all over the place. The Nicolaus ranch was always just so much; it was surveyed once for me, 600 and some odd acres, and it was always known as a very valuable ranch. I know exactly what the owners paid for the land, they paid around \$60 an acre. They paid \$60 an acre for the whole thing. That may be a mistake, I may be in error, but I don't think so. It may be that they paid only \$26,000 for the entire ranch, but I am pretty sure that the people who sold it to them was the Mutual Life Insurance Company, I think it was, and I understood the old gentleman to say that he gave \$60 for the property for 600 acres. I won't say that they paid \$26,000 for the ranch, I don't know about that. The land outside the old levee is good land; it is as good land as any land outside the levee. Supposing that the land is cleared off, it is worth just as much as any other land on that place; it will cost about \$60 or \$70 an acre to clear it off. After that land was cleared off, it would be good for raising alfalfa; you can raise anything under the sun on it. The over-



(Testimony of Charles F. Silva.)

flow can come there, and it won't bother it at all, because it is running water. Yes, I mean to say that if she had cleared that land off and planted it to alfalfa, before that levee was put there, it would have been good alfalfa land; it would raise alfalfa. There may be a portion next to the levee where the water would stay there, and that would kill it, but the most of it would raise alfalfa. I think it would cost \$60 an acre to clear that. At the time she bought the ranch, that land was worth \$250 an acre, provided it was cleared off. That land outside of the old levee could have been cleared off for \$60 an acre, and it then would [257] have been just as good as the other land, and by an expenditure of \$60 an acre the owner would have land worth \$250 an acre. You understand me, I mean it would be worth \$250 an acre now since the levee has been put up. The running water will not hurt alfalfa when it is from the river with high land, the way it is there. I mean to say that water could have come down over that land if she cleared it, and that would have been good alfalfa land. Yes, I remember the ranch before 1892; I know it well. Yes, there was some land out here that was out there before the levee broke in 1892. I don't recall whether there was any land out there at the time the plaintiff bought the ranch; I was on the district below when we cut that piece of land off, it belongs to district 6,—I was working there at that time. The land may be on the outside there; I don't recall whether there was much land left outside or not, but I think there was. The cut has been made



(Testimony of Charles F. Silva.)

within the last two years through there by the Natomas for navigation, and also to make a cut-off across the bend there. No, I cannot recall any sales of real estate in that vicinity from Nicolaus on down, as far as the Nicolaus Allgier place, where it has been sold for as much as \$125 an acre. I cannot recall any outside of what I done myself. Yes, I know the quarter section, right east of the Garwood place, the southern end of the Garwood place. I recollect something about some Japs buying that place some years ago. I don't know very much about the trade or deal; they got in wrong; that is poor property. As you get out that way, you get into poor land all the time; the further out you go the poorer land you get. The further out you go from the river, the poorer land you get. That is true to a certain extent. I base my conclusion that that land is worth \$250 an acre upon the crops I have cut off of it. I have handled that piece of property. [258] I never handled any of the other. I cut hay and ranched that for two or three years. I have had cattle on it. I have handled it a great deal myself. There was no alfalfa on the ranch when I cut it, it was all volunteer barley and pea-vine, and the regular wild hay mostly. About three tons to the acre I think we measured for one year from one cutting. I never knew of any land lying outside of the old levee on the Nicolaus Allgier place to be used for any purpose whatever since the flood of 1892. It has only been used for cutting wood for use on the ranch. The reason that that land outside the levee was not used was because people had

(Testimony of Charles F. Silva.)

too much land, and they didn't care to take it up. People have too much land, they don't figure that outside of the levee at all. The land outside the levee is all in timber, and it would cost a good deal to take the timber out. It would not be an impractical proposition commercially to remove that timber. Anybody who has the money can take that timber out. The trouble is that the people, they have not the money to clear up that land. They have all got too much land. At the time I offered to buy this land from Miss Garwood, I had not been in the market for land very long. I had bonded property that I owned along on the other side of the levee, and I was looking around for some other land. I wanted to get land any place where it was good; I bought in other places. I did not investigate the land values around there; I knew the land around there. I don't bother about asking anybody about land. I knew Mr. Saylor had moved in there only a year or two before Miss Garwood moved in, and he was stuck too. He paid too much. When he paid \$100 an acre for that land; it was too much, because it is not the land he thought he was buying. The land is not as good. Because it isn't. That land has adobe in it, and does not produce the crops that other lands will produce. That land along in there is not as good as the Nicolaus ranch. Yes, I say that when he paid \$100 an acre for that 128 acres, he paid [259] too much. He didn't get no river front, or water, or anything else. There is very little subirrigation on the Saylor place. There is subirrigation in all that country, if the

(Testimony of Charles F. Silva.)

waters are very high in the river. In some years the subirrigation will go all the way back, that is a detriment there in that country. If there is subirrigation and no ditches to take it off, it is a detriment. That is what is the matter with the Saylor place now, there are no ditches. The Garwood place has lots of sloughs. Yes, subirrigation is a detriment at certain times of the year. In the spring of the year, if the water comes to the top of the surface of the ground, it will kill everything that is on it. If it has ditches to carry it away, it makes the land valuable. If it has not, it kills all the crops off. I would know where the sloughs are on the Garwood place, if I was on the ranch. You can see them on the map, plenty of them, maps sometime don't tell the truth. As I said, if the waters are very high in the river subirrigation goes all the way back and stays; if it is not, you don't get any; it is according to the water that is in the river. Yes, subirrigation goes back sometimes 2 miles. Sometimes it don't go at all; it is according to the stage of the water in the river. If the water is very high in the river, it will go back for a long ways. The places along the river are all alike, one is just the same as another. On the Garwood place, if the water is high, the subirrigation will go back all the way, and if it is not, it won't. If the water is high, it will come back a couple of miles. The Feather River varies considerably; sometimes she is up to 22 or 23 feet, and then she drops to 8 or 10, or whatever it may be. The water can't go back at all if it is lower than the surface of the ground,—I mean the water in the

(Testimony of Charles F. Silva.)

river. If the water is low, there is no subirrigation. It is not true that there is always [260] subirrigation along there for the alfalfa fields. You understand what you call subirrigation, do you—the water must show; there may be water in the ground 6, 10, 12 or 15 feet; alfalfa roots will go 20 feet in depth; now, if you know what subirrigation is, I will answer that question if you will just give it to me right, I will answer it any way you want me to. Subirrigation is when the water comes up within a certain distance of the surface of the land, 2 or 3 feet; if it goes beyond that the subirrigation don't amount to much. If the subirrigation comes on top of your land, which it does a good many times, it will kill your crop, whether it is alfalfa, whether it is corn or whether it is barley. If it comes to the top of the ground when the weather is warm, it will kill every crop you have. Yes, one of the troubles of that country up there is that there is too much subirrigation at times.

Q. That land in this country here close to the levee, there would be too much subirrigation there, wouldn't there? A. Yes, but there are ditches to carry that off. Q. How about this land out here? A. That is not subirrigated, that is running water. Since this levee is up there it would be, but there is nothing there. If that was cleared off and the old levee was gone away and a ditch put through it to carry the subirrigation off it is just as good land as lays out there. Q. And you say that this part is next adjoining the river; you say there would be excessive subirrigation out here on the inside of the levee, but not excessive



(Testimony of Charles F. Silva.)

subirrigation next to the river? A. That is, you must understand me, before the levee was up. Q. I am speaking of before the levee was up? A. There is no subirrigation there because the water run over the top of that land in high water. Q. That is, outside of the old levee? A. Yes. [261]

I was in the market to buy land wherever I could buy it the cheapest. I figured there was 600 acres in the property. That is what we always contended was in that ranch, all through, outside the levee and everywhere; it runs down to the point where it has been cut out. I am thoroughly acquainted with the ranch. I knew what I was talking about. I bought property afterwards. No, I don't know anything about what the Japs paid for their land. No, I don't recall any land that sold for \$250 an acre around there. I paid \$255 an acre around Sacramento for 262 acres, right below Sacramento, about 4 miles below Sacramento, in what we call the Pocket District. I paid \$255 an acre for 262 acres. It was good subirrigated land.

Mr. HEWITT.—If your Honor please, I now offer in evidence a certified copy of the judgment-roll in the case of Isabelle Garwood, plaintiff, vs. Joseph Scheiber and Frances Scheiber, his wife, Morris Scheiber and Emma Scheiber, his wife, John Scheiber and Anna Scheiber, his wife, and the Pacific Mutual Life Insurance Company of California, a corporation, from the records of the Superior Court of the county of Sutter, State of California, together with all endorsements on the several papers constituting the judgment-roll in that case.



(Testimony of Charles F. Silva.)

Mr. MACOMBER.—This record of the State court you now wish to put in evidence in order to sustain your defense that the state action is a bar to this action.

Mr. HEWITT.—That is the object of it.

Mr. MACOMBER.—We object to this, if your Honor please, on the ground it is immaterial, irrelevant and incompetent, inasmuch as that defense stated in the answer of the defendant is no defense to this action. This case is an action for fraud and deceit in the sale of real property, and previous to the filing of this suit she filed a suit in the state court which prayed for both [262] damages and for rescission. The complaint in that case was framed upon the theory of damages and rescission.

The COURT.—It will be admitted subject to your objection.

Mr. MACOMBER.—That is satisfactory.

(The document was marked Defendant's Exhibit "F.")

Mr. HEWITT.—We now offer in evidence a certified copy of the judgment-roll in the case of Isabelle Garwood vs. L. M. Curtis, C. H. Bryan, L. C. Bostwick, and others, a record of the Superior Court of the county of Sutter, State of California, together with all endorsements on the several papers constituting the judgment-roll, it being an action of plaintiff to correct and quiet the title to the property which she purchased of the defendants in this action.

The COURT.—Who are the parties defendant?

Mr. HEWITT.—There are about 40 or 50 of them,

(Testimony of Charles F. Silva.)

I should judge, if the Court please. It was a proceeding brought under sections 749, 750 and 751 of our code, and the object of introducing it is for two purposes; first, the contract entered into between plaintiff and defendants provide that if there are any defects in the title that they will be rectified, if your Honor please, to the extent of \$250 expenses toward carrying it out; the second is that the complaint in this action is a verified complaint, verified by plaintiff herself, and shows the land which she says under her own verification she is the owner of; that is, it gives a description of it.

Mr. MACOMBER.—Now, if your Honor please, we object to this upon the ground it is immaterial, irrelevant and incompetent, and has nothing to do with this case.

The COURT.—It may be received in evidence.

Mr. MACOMBER.—We note an exception.

#### EXCEPTION No. 5. [263]

Mr. HEWITT.—I now offer in evidence a certified copy of the warrant issued by Reclamation District No. 1001, bearing date December 30, 1911, for the sum of \$5,106.43, together with all endorsements on the warrant in question, the warrant being endorsed, "Pay to the order of Isabelle Garwood, levee district No. 6, by J. J. McNamara, Chairman, Julius Rolfe, Clerk," also endorsed "Isabelle Garwood"; also endorsed a second time "Isabelle Garwood" and "C. E. Williams."

Mr. MACOMBER.—We object to this being introduced in evidence upon the ground it is immaterial,

(Testimony of Charles F. Silva.)

irrelevant and incompetent, and has nothing whatever to do with this case; but we will stipulate that it be admitted in evidence if counsel be fair on his part and stipulate that he has nothing to do with the purchase price the defendant received, the \$75,000, and the plaintiff has been assessed subsequent to that time \$26,000, to keep the land free from overflow, and this amounts merely to a reduction, making the assessment \$21,000—if counsel will stipulate to that, I will withdraw my objection.

Mr. HEWITT.—We will make no stipulation to that effect because of the very nature of the assessment.

The COURT.—The objection is overruled, and it may be received.

(The document is marked Defendant's Exhibit "H".)

Mr. MACOMBER.—We note an exception.

EXCEPTION NO. 6. [264]

**Testimony of Edward Von Geldern, for Defendants.**

EDWARD VON GELDERN, called for the defendants, testified as follows:

I reside in Yuba City. I am a civil engineer by occupation. (Counsel for plaintiff admits that the witness is qualified to testify as an expert in civil engineering and surveying.) I surveyed the Scheiber ranch July 12th of this year. I knew the original boundaries of that ranch from previous surveys that I have made in that territory, but I based the work of this survey on the description furnished from the suit to quiet title, and followed out the description on

(Testimony of Edward Von Geldern.)

the ground, and found it to coincide with the lines as I knew them to be. The lines were exactly as pointed out by the Scheiber Brothers. I wish to correct my statement, as to knowing about one particular line in the bottom line, I was not familiar with that one line, but that holds good as far as the others are concerned; all these lines were also shown me by the Scheiber Brothers, and Mr. Zimmerman. I don't know where Mr. Zimmerman resided, but I think he lives in that locality somewhere. I know that he has lived there some years ago. Yes, I made a map of my survey. Yes, the map, which you show me is a correct map of the place, as surveyed by me. (At this point the said map is introduced in evidence, and marked Defendants' Exhibit "I.") When I was there surveying, I took elevations of the land between the two levees, the old levee and the new levee, so-called I took elevations of the land between the new cut of the Feather River and the old Feather River channel. In seeking those elevations, I did not use any regular datum. In order to facilitate matters I assumed the datum and made everything in direct comparison to that datum. I used the elevation of the water in the river at that time as the base of starting point of that assumption. At that date, the water in the river was not at [265] its lowest stage, it was about three feet above the water-mark at that time. I found the land close to the cut, or that portion of the land between the two levees close to the cut to be about 14 feet higher than the water in the river. I just gave you the elevation, the difference between them. The elevation of the

(Testimony of Edward Von Geldern.)

old channel, the difference in elevation between the bed of the old channel and the river was 12 feet; it averaged 12 feet pretty well all over the channel. It was 12 feet higher than the stage of the water at that time. I found 609.9 acres within the boundaries of the entire tract.

Cross-examination.

Mr. MACOMBER.—Q. Mr. Von Geldern, I understand you commenced your survey down at this corner, did you—you got this section corner? A. Yes. Q. And then you proceeded north to this point? A. Yes. Q. And then back and around? A. Yes. Q. Now, how many acres did you find—follow me around this way, right around down the line of the old levee, following the meanderings of the old levee, back along the road there, and then down here, taking in the quarter-section back to your starting point—was that it? A. My survey was computed, was completely computed for the whole thing, although I have made a kind of rough estimate, but I would not vouch for it absolutely being correct.

Q. You won't say how many acres there were in this? A. Just approximately.

Q. Approximately how many? I will withdraw that question. You say you surveyed the line, the original line going out here? A. Yes.

Q. Where did you get that description, that is this description of this territory out here? A. That was the description that the [266] suit to quiet title was based on. That was furnished by Mr. Hewitt.

Q. You surveyed the portion of the ranch lying



(Testimony of Edward Von Geldern.)

west and north of the river upon the description given you by Mr. Hewitt? A. That, and also I might say that the description that was furnished me around that river was the original description of the ranch—that is, that line coincides exactly, or very nearly exactly with the original Government meanderings of the river.

### Redirect Examination.

Yes, I made a map showing the ownership of the land adjoining and about the Scheiber ranch. Yes, the map which you show me is the one I made. (The map was introduced in evidence, and marked Defendant's Exhibit "J," also an abstract of title to the property was introduced and admitted in evidence, marked Defendants' Exhibit "K.")

### Testimony of G. A. Wessing, for Defendants.

G. A. WESSING, recalled for the defendants, testified as follows:

I reside at Nicolaus, Sutter County. I have lived there 26 years. I came there in the fall of '88. I am a farmer at the present time. I have been in the merchandise business. I own land in the vicinity of Nicolaus. I have bought and sold land in that vicinity. I know the ranch now owned by Miss Garwood. I have known that place since my time in Nicolaus. I am a trustee of Reclamation District 1001. I have known real property being bought and sold in the vicinity of Nicolaus. From 1906 to 1911, in Sutter County, real property value stood about the same. Property ran along pretty evenly that time—

(Testimony of G. A. Wessing.)

property from about 1906 to 1911 was selling well. Yes, I know the value of the Scheiber property, or the Garwood property in 1911.

Q. Taking the ranch as it stood there as a whole at that time, [267] what was its valuation?

Mr. MACOMBER.—Now, one moment, if your Honor please, in order to save time, it will be understood that my objection made yesterday to the value of the ranch in its entirety or the value of the portion not described in the complaint will run to all these questions?

The COURT.—Yes.

Mr. MACOMBER.—Subject to the same ruling?

The COURT.—Yes.

Mr. MACOMBER.—I note an exception.

(EXCEPTION NO. 7.)

A. About \$80,000.

Mr. HEWITT.—What is its market value at the present time?

A. That ranch is worth \$100,000.

The levee that protects the property from the overflow of the Feather River commences at the foothills near Sheridan and runs down to the Bear River until it intersects the Feather, and down the Feather River to the Sacramento about 14 miles. There was a levee in existence in 1911—they were working in 1911—the reclamation district had been formed, just started in. There had been a levee there all my time. The new levee was completed in 1912 or 1913. Yes, I raised some alfalfa. My ranch is about one-half

(Testimony of G. A. Wessing.)

miles from the edge of the Garwood ranch. I have 850 acres of river land. My ranch has been run as a stock ranch, and has been pastured. I have got at the present time about 20 acres in alfalfa, on the front, what you call the front land. Before the reclamation, the back land of my place was subject to overflow, and it ran into wild grass; the front land, it was rented to a cattle-man, and last year he just pastured it and tramped it out, and we are plowing it and putting in grain; in another year we will put in alfalfa. At the north and east of the Garwood property, there is a slough,—it is to the southward, it is not Ping's slough; it is that water that comes in above Nicolaus, just at Nicolaus there. To the eastward [268] of the Garwood property, that is all first-class good land, extending away over to the east line is farming land, more over to the canal. That is grain land, or fruit land, you might call it. Yes, the district had considerable experience in condemnation suits. That was about  $4\frac{1}{2}$  miles to the east. The land along the canal is adobe land. The Scheiber property is better. That land will not grow alfalfa out there without irrigation, and the Scheiber property will grow alfalfa without irrigation. There were about 8 condemnation suits brought up there by the district. I think there was 12 or 15. On an average there was \$100 to \$150 an acre allowed for the land taken. Yes, the term, sub-irrigation, has a well-defined meaning in that locality. Subirrigation is improved by cultivation; it is the water going under, and it will seep up, be drawn

(Testimony of G. A. Wessing.)

up—you cultivate the surface, and you will bring the moisture up, where as if you let the surface lie dormant it will dry up, and it will seal and you do not get the subirrigation that you would if the land is worked—it will draw up. There are some orchards in that locality in Sutter County being planted. There are some orchards in cultivation in Sutter County north of this place. Yuba City is an orchard country—it is all orchard. Absolutely, they depend upon subirrigation for the cultivation of peaches and different kinds of fruit there. At Yuba City they have orchards back there for five miles. The condition, as far as subirrigation is concerned, is similar in the vicinity of Nicolaus to what it is in Yuba City. The property owned by Miss Garwood has always been looked upon as one of the best ranches. The place has generally been called the Nicolaus Allgier place. I have been over that land. Referring to the scrip, or warrant, of Reclamation District 1001, in the sum of \$5,000, it is in evidence here. At the time they built the new levee, in order to pay for [269] the old levee, they allowed all land owners on a pro rata of about \$5,000 a mile, and each were paid according to the former years' assessments and valuation; they figured it on that basis; whatever the property was assessed for, they paid them at that rate for their levee. That warrant would represent the old levee across the Scheiber ranch, the valuation as fixed. That would represent their portion of the levee. The original plan of reclamation contemplated enlarging the old levee;

(Testimony of G. A. Wessing.)

the original plan followed the old levee. They decided later to take the river course, and they then bought a right of way along the river, along facing the river bank. They bought their right of way from Miss Garwood, and the property owners. They paid \$25 an acre for the land that they actually used along the river bank for the levee. I don't know how many acres they purchased from Miss Garwood, I was not a director at that time, and, of course, I am not familiar with just the amount. I could not say just what it would be; I know they paid for what they actually used. The effect of the change in the levee put this land between the old levee, and the new levee, in a protected position.

#### Cross-examination.

When they changed their idea, instead of following the old levee, they decided to come right straight down the river channel. That had the effect of reclaiming some land in each one of the ranches along in there, so that now, the land which lies between the two levees on the Garwood place, some 57 acres, or 60 odd acres, between the two levees, is now reclaimed land. Yes, I know what the condition of that land was before the new levee was constructed there. It was river land; it was swamp land, it was never used for agricultural purposes, no. It was not used for agricultural purposes because it was subject to overflow whenever the river came up. [270] For that reason it would not be practicable to use it; and, therefore, it was never used. The same would hold of any land lying north and northwesterly of the old



(Testimony of G. A. Wessing.)

levee. Yes, I remember when the levee broke in the year 1892. The old levee came down following the meanderings of the old levee, as it is delineated on the Garwood place, and proceeded on to what is known as the Nelson Bend, in a northwesterly direction. When the levee broke in 1892, instead of reconstructing the levee as it was there then, they built it right straight down in a southwesterly direction, instead of a northwesterly direction, as it had gone before, when following the line of the old channel. In 1893 they shot the levee straight down in a southwesterly direction. Yes, after that, this land, this portion of the Nicolaus Allgier place, was abandoned to the river, as well also as a portion of the Claus Peters place, and all the places in there at Nelson Bend. After that year, until the present day, during the 24 years that have elapsed, that land has never been used for anything. It would be impossible to use it for any agricultural purposes. The tule is down further from the Garwood place, down at the bottom of the basin, around the big wide canal, that is tule. When the Bear River would overflow from breaks, the land down in the tules would fill up with water. When the water in the tule would get high, it would come up and overflow these lands. That canal on the east side of the Nicolaus Allgier place, about three miles to the east, was built to collect these waters coming down from the foothills; to pick up these streams, like Auburn Ravine, and the other foothill streams, and swerve the water off into the cross-canal between the two districts, 1001 and 1002.

(Testimony of G. A. Wessing.)

Then there is a pumping-station situated down near the Feather River at the junction of the cross-canal and Feather River, which pumps the water flowing [271] into the basin into the river. This reclamation work was done since 1911. To pay for all the work of protecting this back land, there was an assessment put on all these lands. The assessment ranged from \$16 and a fraction an acre up to \$25 an acre. They had to raise in the first place about \$850,000. That was the first assessment. The second assessment was to raise \$500,000 more. There will be a general expense account from year to year.

Q. Now, then, as I understand it, the purpose of this reclamation work was to protect this land all in here, that is, from one-half to three-quarters of a mile from the river down in a southeasterly direction from overflow; what I mean is this: This cross-canal work did not give any particular benefit to the lands up close to the levee, that land was higher up, wasn't it? A. Yes.

Q. In other words, for instance, on the Nicolaus Allgier place, commencing with contour line 32, about half-way on the ranch, where the ranch bends, from there up to the levee, that land is higher, isn't it? A. Yes.

Q. And therefore that land would not be benefited by this cross-canal? A. Not so much, but you have got to pick that water up or the water back on the tules will back up.

Q. Previous to the time this reclamation work was done, this back land on the Garwood place, as well as these rear lands down here, were subject to overflow? A. All subject to overflow.

Q. Subject to

(Testimony of G. A. Wessing.)

overflow, and it was not practicable to farm them?

The COURT.—What land are you referring to?

Mr. MACOMBER.—I am inquiring about the Garwood place, as well as all these places along here. Isn't that true? A. The back land was subject to strong overflows and the tules full of water and the reclamation work kept the tule water out. Q. That was the purpose of building this cross-canal—the expense [272] of making this cross-canal was to protect these back lands in all this place from the overflow, from the tules, isn't that true? A. Yes.

The COURT.—What part of the Garwood ranch was back land?

A. There was about 60 acres in the ranch back; a part of it would overflow when the tules were full of water and the water would come up; it would not come over all; it was not tule land, but it was and that when the American River was high and the south wind blew it would bring it up. The land two or three miles east of the Garwood place is not alfalfa land; it has no subirrigation. I did not say that up at Yuba City, five or six miles from the river, they had subirrigation; I said that about five miles out they had orchards there, and that they had cultivation and they had subirrigation; but this is on higher ground back; it is toward the foothills more than that land. The subirrigation would not go through bedrock, or anything like that; it would not go through clay; it percolates through alluvial sediment, but not through clay. Yes, I say that I think that ranch is worth in its entirety \$100,000 now. I think that it is worth \$20,000

(Testimony of G. A. Wessing.)

more now than at the time she bought it, because the reclamation has improved all the property. Since the reclamation is in there, people are going ahead in our locality and planting orchards, and they are protected; but if you were all open and no levees back of you, the floods would sweep over it. The back waters would come up. Yes, now, that the back lands are protected from overflow, the value of the land is enhanced. We have good flood levees. Yes, sir, land values ran along about the same from about 1906 to the year 1911; the land stood pretty steady. From 1899 and 1900 up to 1911 and 1912 the values ran along pretty steady, about the same. There was not much change. Yes, I know of some sales that have taken place in that vicinity in the [273] last 10 years: Adam Kreig bought the Drescher ranch—there were 55 acres, right up against the levee; it was choice fruit land. That land is midway between the Garwood place and the town of Nicolaus. He paid \$200 an acre. He paid about that for the ranch, and then he got personal property; he paid extra, \$200 an acre is what they considered the ranch at that time. He paid \$10,000, a little more, for the ranch, and then he got personal property that he paid for; it was invoiced separately. There was an old house on the place; he has fixed it over since; he built the barn; it is a small barn; the improvements do not amount to much. The nearer you come to the town of Nicolaus the nearer you are to the railroad. I don't know that land closer to town is any better, that there land is all the same; it is all



(Testimony of G. A. Wessing.)

the same kind of land. The Valley place lies about one-half mile north of the Garwood place. That land was sold for about \$180 or \$200 an acre. I don't know what Meiss did sell for. I don't know that it was \$100 an acre; I know that Meiss sold to—I don't know just what they did pay for that. Yes, that place was put up at auction by the Probate Court just a year before Miss Garwood bought the Scheiber place. I was the highest bidder at that sale. I bid it in at about \$69 or \$70 an acre. Q. There was no one bid any higher for that place, was there? A. At that time it was surrounded with a bad levee there. People didn't want to take hold of it right there; the river—that is what scared them out. Yes, I was the highest bidder then for that land, and the highest I bid was \$69 an acre. I do not know that the highest estimate, when the matter was heard in court, was \$135 an acre. I did not go there at that time. I do not remember saying to Mr. Greider that I would be very glad to let this land go for less than \$135 an acre. I don't know what the Valley place was sold for. I [274] know it was traded through different people so much that they got disinterested and invested in other people's land.

Q. Now, as a matter of fact, you know that there is no land in that neighborhood at any time within the memory of man, or within your recollection, that was sold for \$250 an acre; isn't that a fact? A. There is land there that I have known people to refuse that for it. Q. Where was that? A. Borgman's ranch.



(Testimony of G. A. Wessing.)

Q. Now, Mr. Wessing, don't you know as a matter of fact that Borgman's place is greatly improved, that this man Borgman came out from Wisconsin a few years ago and put in a lot of irrigation devices on that land A. He came on without any devices and paid \$131 an acre. I did not see the money pass, but I met Mr. Borgman at the train and brought him there with his family when he came to town. There are about 40 acres on that ranch. Yes, I own this land on the Feather River delineated on this as being approximately south of the Anderson ranch. I bought 850 acres; I have a half interest in it.

Q. Now, Mr. Wessing, you own this land on the Feather River delineated on this map as being approximately south of the Anderson ranch, do you not? A. Yes.

Q. How many acres did you buy? A. 850; I have a half interest in it.

Q. You bought that 850 acres for \$26,000; isn't that the idea? A. Thereabouts.

Q. \$26,000 for 850 acres? A. No, that is a half interest in it; I got a half interest in it.

Q. As a matter of fact, did not the whole 850 acres sell for \$26,000? A. Gilmore bought that at, I believe, something like that.

Q. Gilmore bought it for \$26,000? A. I think so, about that.

Q. And then he sold you a half interest in it?

A. Yes. [275]

Q. Now, then, Mr. Wessing, when did Gilmore buy it?

(Testimony of G. A. Wessing.)

A. Gilmore bought it, I think, in 1911 or 1912.

Q. In 1911 or 1912—about the time the Nicolaus Allgier place was sold to the plaintiff here. Your ranch is a little over half a mile from the south corner of the Garwood place?

A. Yes, it is about half a mile. Right below my place is the McNamara land. Judge Shields' place is below McNamara's. Shields paid \$70 an acre for his place, I believe. All I know is hearsay as to these properties. Judge Shields bought it in 1911 or 1912; I don't remember which. Saylor bought his place in 1909 or 1910. There are about 128 or 130 acres to the Saylor place. The Saylor place, as compared to the Nicolaus Allgier place is about the same land; it is about the same thing. As far as the subirrigation is concerned, it is about the same character. Now, in respect to the Redfield farm, that runs about the same as the Scheiber place, too. In respect to soil and subirrigation, and so forth, it runs about the same. It is about the same quality. The front end of the Redfield farm is better than some of the land further back. The front is the best land. The front land of the Garwood place is more valuable than the back land. We value all of the front land more than the back land. I don't know that Dave Redfield sold that ranch to the Scheiber Brothers for \$5,000. They sold the ranch, and I believe he held out about 12 acres of his ranch. I don't know that Dave Redfield sold that Redfield farm right northeast of the Nicolaus Allgier place to the Scheiber Brothers for \$5,000; it was more than

(Testimony of G. A. Wessing.)

that. I was under the impression that he got somewhere about \$14,000 or \$15,000 for that piece of property. There was some personal property with it. There is about 108 acres to that piece, not counting what is outside of the levee. There were some horses and cattle; I don't know to what extent, exactly. [276] As to where I got the information to the effect that that property was selling for \$14,000, well, it was talked about by the people at that time; I would not be positive in regard to that, but the time Saylor bought his ranch—in regard to the sales made, you always hear of those things. Saylor paid \$18,000 for the ranch, and some stock; there were about 128 or 130 acres. I know that he paid \$18,000 for the ranch, and the stock on it. I do not know that the selling price of the ranch was \$100 an acre. I know he bought it as a whole. There was 180 acres of land just east of the Garwood place belonging to John Swall, which was sold to some Japs for \$85 an acre. Then after paying a part of the purchase price, they defaulted on the balance, and let the land revert to the sellers. In respect to the offer of \$250 an acre for the Borgman place, I will say that Mr. Borgman told me himself at the time that he had refused \$17,000 for his place. There was some little stock, I don't know how much.

Redirect Examination.

The Drescher ranch, that was sold to Adam Kreig, was all alfalfa land—absolutely, every foot of it. At the back end of that ranch there was some slough and low land, but with proper drainage that is all

(Testimony of G. A. Wessing.)

alfalfa land in there. The Borgman land, I think, was purchased in 1909 or 1910—I think in 1909. The 800-acre ranch that I spoke of, was the Miller place; 600 acres of that place was in the tules. The McNamara place, all the land south of the slough there we consider tule. The Redfield ranch was purchased by the Scheiber Brothers in 1908 or 1909. Some of the land purchased by the Scheiber Brothers lies outside of the old levee. There is 20 acres outside, I should judge. That land outside of the old levee on that place is similar to the land outside [277] of the levee on the Garwood place. The land sold to the Japs for \$85 an acre was not tule land, it was adobe land. It is towards Strickland Station I base my opinion that the Garwood place is now worth \$100,000 upon the fact that it has got a great quantity of alfalfa land, and it will all grow alfalfa; it is all alfalfa land; it will grow it; the land that I value as the best land is in front, and that will raise 5 or 6 crops without irrigation, properly cultivated; the land in the back will raise at least 3 without irrigation; and land of that class you cannot buy it anywhere; the people that have got it don't let loose of it at any price; they will sell it, but at a very exorbitant price. There are at least 150 acres of first-class alfalfa land—the front land; then there is a middle line of about 150, then there is 160 that are further back, that will raise 3 crops of alfalfa without irrigation. The Scheiber Brothers bought their land in 1909, or thereabouts. They bought it years before that on contract. I don't know what the terms of



(Testimony of G. A. Wessing.)

purchase were by which the Scheiber Brothers bought the Nicolaus Allgier place; I know they rented the place to start in with, and then afterwards they made a term purchase.

**Testimony of Benjamin Drescher, for Defendants.**

BENJAMIN DRESCHER, called for the defendants, testified as follows:

My name is Benjamin Drescher. I reside in Nicolaus. I know the land that the Scheiber Brothers, defendants here, sold to the plaintiff. I have known it all my life, 40 years. I have resided in that neighborhood some 41 years. I own land in that vicinity, and I did in 1911. I am quite familiar with the Scheiber Brothers' ranch, the ranch in dispute. I am well acquainted with it. I [278] have been all over it; both back and front, and around and along the river. It is a fertile piece of land; I have not bought or sold land in that vicinity. I know of some land being bought and sold there. I never farmed the Garwood ranch myself. Q. Do you know the value of that Scheiber Brothers' ranch on the 1st of November, 1911? A. Well, I place a value of about \$80,000. Q. At that time it was worth \$80,000? A. Yes. In placing that valuation I took into consideration its condition and situation at that time; its productive qualities and so forth. I think it would have sold for that, allowing a reasonable time to find a purchaser. The reclamation that has been done since that time will improve the value of the place in proportion to the cost of reclamation.



(Testimony of Benjamin Drescher.)

Cross-examination

The properties are improved in proportion to the reclamation work because they will be safer; the land is safer from overflow and floods now than it ever was. One reason why—the cross-canal was built to keep the water back from the tules, it is a drainage canal for the water from the plains, to keep the water off the land in the lower part of the district. The Garwood place was never flooded every year, anyway. Of course, the whole district has been flooded at times, but not every year. Sometimes it would be flooded for considerable periods of time. I do not know what Saylor paid for his place. I do not know what the Scheiber Brothers paid Dave Redfield for his place. I do not know what the Redfield place was sold for. I have never heard. I don't know anything about the sale of the land adjoining the Garwood place on the east to the Japanese. Some of the Valley place sold for \$150 an acre, some of it was sold for \$100 an acre. I was heir to some of that land, and I got \$160 an acre. About half of the ranch was sold [279] for \$100 an acre. Some of the heirs sold for that. Yes, some of the land running from the river bank was sold for \$100 an acre. Yes, the value of the land in the last ten years ran pretty steady up there. The values seemed to be increasing right along; I could not say how much. I think subirrigation extends beyond any part of the Garwood ranch. Yes, I understand what subirrigation means. I have had experience with subirrigation. I know where the sub-

(Testimony of Benjamin Drescher.)

irrigation runs along that place from Nicolaus down south along the river. I would say that the Garwood place is all subirrigated. Of course there is a difference in the composition of the land; the ranch is not all of the same material. The land on the Garwood place which lies outside of the old levee is clay and sandy soil. In the year 1911 the new levee was not in existence. At that time all portions of the land outside of the levee were abandoned to the river. That particular portion of the Garwood ranch was never used for anything at all, only for wood. The best land on the Garwood ranch I figure at \$220 an acre. I don't know how many acres there are in the ranch. I place it in three grades—front land, middle land, and back land. I figure the middle land at \$180 an acre; I figure the back land at \$140 an acre. I would say that in 1911 this back land was worth \$140 an acre. No, I cannot call your attention to any land that is not subirrigated that sold in that neighborhood for \$140 an acre; only I have heard from hearsay that the land east of Nicolaus Station has sold for \$135 an acre—adobe land, a 40-acre tract. I have heard that. I do not know what was paid for Judge Shield's land. I cannot call your attention to any land around there that sold for \$250 an acre, but my brother sold 55 acres for \$12,000, right about half a mile below Nicolaus, that was the Drescher place. It is right above the Redfield place. This land was 55 acres for \$12,000. There was a house and a barn, [280] that is about all the improvements—a 6-room house. I believe

(Testimony of Benjamin Drescher.)

it was sold in 1910 or 1911. No, I did not see the money pass; I merely know what was told me.

**Redirect Examination.**

Yes, my valuation of this Scheiber Brothers' or Garwood property, is based on what I know of the land, and its productive qualities, and its condition, and the value of it at the time.

**Testimony of John Borgman, for Defendants.**

JOHN BORGMAN, called for the defendants, testified as follows:

I reside in Nicolaus, in Sutter County, California. I have lived there 10 years in May. I am a land owner in the vicinity, and have been for 10 years. I bought the land myself direct from a real estate man. There are 42 acres to my ranch. As to how my land compares with the Scheiber ranch, it is average land, as the Scheiber ranch; the Scheiber ranch has got some better, and some probably not as good. I paid \$5,500 for my place. There are 42 acres. I know the Scheiber property. I have known it as long as I am there. I was acquainted with values of property in that vicinity in 1911. Q. What was the value of the Scheiber property as a whole in September or October, 1911? A. Well, according to other sales and according to the value of that land it should have been worth seventy-five thousand to \$80,000 as a whole. Yes, I am acquainted with the term sub-irrigation. In reference to the Scheiber ranch, my land is located about west from the Scheiber ranch; north of me is the Saylor ranch; east of me is the

(Testimony of John Borgman.)

Swall property. There is about 120 to 140 acres of the Scheiber land that is about the same quality as my land. The better quality is near the river. There is about 135 to 140 acres of the best quality. That 120 or 140 acres is better than my land. The second-class is about the same quality as my [281] land; I had it of the same value. I mean there are three classes of lands. I was assessor in that district No. 6 before this new reclamation was formed, and I had it in three classes of land around there. I base my opinion that that land was worth from \$75,000 to \$85,000 in 1911 according to the sales that had been made just before and just after that sale. I was familiar with its productive qualities. Productive qualities had something to do with fixing my valuation of the land. The 160 acres that is in the quarter section is not as good land as mine, not quite, no.

#### Cross-examination.

I could not say positively how many acres there is in the ranch. I could not state anything what there is in it, only by hearsay. I did not make any surveys of it. I figure 135 acres of the Garwood place to be first-class land, that is up near the levee. As you go back it is not so good; that is because you cannot raise the amount of crops on it, of alfalfa. The further it goes off from the river, it gradually loses some of the subirrigation, gradually. There are in the neighborhood of 120 acres in the second-class. I value the first-class land at \$250 an acre. I value the second-class land at \$200 an acre; I value the third-

(Testimony of John Borgman.)

class land at \$100 an acre. There might be 160 acres in the third class; that is the lower part of the place. Yes, I value that \$100 an acre. That land is not so valuable, because it lays farther off from the river; there is not much subirrigation. Yes, I have stopped to think how much that would total up. That would total up between \$75,000 and \$80,000, except giving some of the land outside of the levees some value; that don't come in the figure. Yes, I have my place pretty well improved with pipes underneath. Yes, I have my land checked. Yes, I have a well on my place, and I have [282] a very scientific system of irrigating — in that way I raise alfalfa. I have that system of irrigation because I am not satisfied, unless I get the utmost out of my land. The Saylor land is not quite as good as the best land in the Scheiber ranch. No, not quite, I have been watching it, I was assessor at that time. The Scheiber ranch raises 6 crops, and the Saylor ranch 5, and I get 4. The Saylor place is fully as good as the middle grade of the Garwood place. I take it according to the way I assessed it, and they always were satisfied with the assessments I made. I put the Garwood ranch at that time at \$150 an acre, and the Saylor ranch at \$120 and mine at \$108; the second-class of the Scheiber ranch at \$108. Yes, I say that the Saylor place has a value as good as the second grade on the Garwood place. I am not basing my valuations in fact upon the sales that have taken place in the last year; the productivity of the soil. I have been in that neighborhood since 1905.



(Testimony of John Borgman.)

There has been some alfalfa grown on that quarter section of the Scheiber place to the east of my place during the last two years. I could not tell how much; that is since the reclamation work has been in. No, there never was any alfalfa before the reclamation. Yes, the farmers do plant alfalfa on the back lands out of the subirrigation area. On the Swall place they had a reclamation levee all the way along the ranch, they were protecting it from the back waters. They had a reclamation levee all the way around it. The Swall place is east of the lower part of the Garwood place, that place is entirely surrounded by levee, and so protected from the water from the tules. Without that levee it would be partly subject to overflow. During my time that land outside of the old levee has never been used for any purpose; it was partly kept for the timber. It was not protected from overflow. It was covered with overflow a large portion of the time, that is at the wet season. The lowest grade of land of the Garwood place would [283] raise at least three tons of alfalfa to the season. A part of it is planted in alfalfa now, that was seeded two years ago, and a year ago last winter we had back water covering that, and it did not take the sand away, for young alfalfa left there, there is a good stand this year—this year we did not get any back water. The reclamation system was built, and no back water came any more, and we have a good stand on the upper part. The lower part could be put in alfalfa and raise as good a crop as that. The middle-class

(Testimony of John Borgman.)

land on the Garwood place would produce 4 to 5 tons of alfalfa without irrigation. The rear portion would produce 3 tons without irrigation; with irrigation you could do all of it, just as good as the front land. We have not got that heavy clay soil, what you call a heavy clay soil; we have a mixture of sediment through that soil. The way it is plowed up, it is a very fine soil; I did not dig down into that, but I dug down into my own, and mine is all the same. My land is about half a mile east of the Garwood place; there is just a quarter of a mile between us. The best land of the Garwood place will produce from 7 to 8 tons of alfalfa to the acre per year in 6 crops. The average price on the ranch for alfalfa loose is \$7 per ton. I never found that there was any difference in market value between irrigated alfalfa and other alfalfa. You can't tell the difference. The alfalfa that we grow there with irrigation looks better than some that grows on the highland, subirrigated, it is leafy and as juicy as the first crops in the spring. Yes, I know of land up there that sold as high as \$250 an acre. Right alongside of the Scheiber ranch, one of the Swall brothers bought the other's share out at \$250 an acre 2 years ago. I am sure of that.

Q. Did you see the money pass? A. He has got a mortgage on that place for that. I am not any more friendly with the Scheiber brothers than I am with anybody else that treats me fair and right. That is [284] all I want from my neighbors. They have never treated me wrong. The Redfield

(Testimony of John Borgman.)

farm, situated just north of the Garwood land, is about the same quality as the Garwood ranch. Yes, it is about the same quality.

**Testimony of J. B. Thompson, for Defendants.**

J. B. THOMPSON, called for the defendants, testified as follows:

I reside in Nicolaus, Sutter County. Our land is about half a mile from the Scheiber Brothers' property. We had that land in 1911, yes. I have known the Scheiber brothers' ranch since 1882. I am familiar with its productive qualities. I know the character of the soil. I have been on it frequently. I have farmed part of it. Q. Do you know what the market value of that land was in September, October and November, 1911?

A. Well, I have got it in three different pieces of land.

Q. I do not care for the grades of it; I want to know as a whole? A. The whole lot to be worth about \$80,000. Yes, that is what it would sell for at that time, allowing a reasonable time to find a purchaser. There were quite a few buying land around there in 1911. I am a farmer and a dairyman.

**Cross-examination.**

I divided that land into three grades, yes. In the best grade I have included about 150 acres. I figure that to be worth from \$225 to \$250 an acre. The second grade runs from \$160 to \$170 an acre for 150 acres. In the poor grade of land there are 160 acres

(Testimony of J. B. Thompson.)

at \$125 an acre. The first division of the land, that is the good land, commences at the levee and proceeds back from the levee 150 acres. The middle land I figure at 150 acres, then in the quarter section there is 160 acres. The land which is now between the 2 levees, I figure that to be worth \$25 an acre. At the time the plaintiff bought the land, the old levee was there, but the new [285] one was not. There was about 60 acres of the land outside the levee, which I figured to be worth \$25 an acre; the rest of the land outside of the old levee, I would not figure to be of any value at all. No, I did not consider that as being worth anything. The land that now lies between the 2 levees, I figure to be worth \$25 an acre. I farmed what is called the 100-acre field, and the strip running down to where the house and barn used to be. The 100-acre field joins the Redfield farm on one side, and the county road on the other. That is the best portion of the land. I never farmed any other portion, other than a little strip down the levee, where the cut-off is now. The Nicolaus Allgier place is better than any of the Saylor place. I say the 100-acre field is better than the Saylor place. Part of the Saylor place is good land. There is some of the Saylor land covered with sand, but the Saylor place, taken as a whole, would average to be as good as the second grade on the Garwood place. The Redfield farm just at the northeast of the Garwood place runs about the same character as the Garwood place. During the 10 years immediately preceding the sale

(Testimony of J. B. Thompson.)

of the Scheiber place to Miss Garwood, land values ran along pretty good—about the same, without any change. Yes, the values were increasing; since they started the repairing they increased more. After the reclamation was formed and they got the levee up the land is worth a good deal more. The reason the land is worth more now is because this back land is now protected from the water from the tules; that is what the canal was for. The water would be a nuisance for a while first, but they would plow the land after the water would go down and put in a good crop; that is an annual crop like buckwheat.

Redirect Examination.

Yes, the building of the levees along the river also increased the value of all the lands in that vicinity.

[286]

**Testimony of Arnold Zimmerman, for Defendants.**

ARNOLD ZIMMERMAN, called for the defendants, testified as follows:

I reside at Nicolaus. I have resided there since 1877. I am acquainted with the Scheiber property now owned by Miss Garwood. I am a farmer by occupation. I have known that ranch since '77, but I lived on the next ranch since 1883. I have been a farmer all my life. I am the Zimmerman that pointed out the lines to the surveyor when he was making a survey. I pointed out to him the boundary lines between the land formerly owned by Claus Peters and the Scheiber ranch. I pointed them out to him correctly. I am more or less familiar with



(Testimony of Arnold Zimmerman.)

the value of land and the production of land in the vicinity of Nicolaus, similar to the Scheiber place.

Q. What was the value of the Scheiber ranch as it stood in September, 1911, October, 1911, as a whole?

A. That whole ranch, what I understood it was sold for?

Q. I say what was its value?

The COURT.—Q. State whether you know its value?

Mr. HEWITT.—Q. Do you know what the value was at that time? A. Yes.

Q. What was the value? A. Well, there is a little difference in the land.

Q. Take the ranch as a whole, what was it worth?

A. As a whole?

Q. Yes. A. It is worth more than Miss Garwood paid for it.

Q. How much was it worth? A. How much more?

Q. Yes. A. I don't know; I have not figured it, but I think it is worth five or \$6,000 more.

Q. Than what she paid? A. Yes.

Q. Do you know how much she paid? A. Only by hearsay. [287]

Q. How much have you in mind that she paid?

A. \$75,000.

Q. You think it was worth five or \$6,000 more at that time? A. Yes.

Q. What is it worth at the present time as a whole since reclamation? A. Well, it is worth quite a

(Testimony of Arnold Zimmerman.)

bit more; it has been quite a benefit to part of the ranch.

Q. How much would you say it was worth now?

A. Well, now about \$85,000, something like that.

Q. \$85,000?      A. Yes.

Q. That is as much as you think it would be worth now?      A. Well, I don't know.

Q. I mean, taking it as a whole?

A. Taking the whole ranch as you mean?

Q. What is it worth now since reclamation?

A. Since reclamation—you mean since the reclamation district has been in these?

Q. Yes.      A. I would guess about \$100,000.

#### Cross-examination.

The land is different a little in character. There are at least 450 acres of good land; I don't know exactly either, but I think so. I have not cut that up, or classified it, not particularly, of course, the middle of it is better than some of it. I would not value the land lying between the two levees to be more than \$25 an acre. That land cannot be used, no, there is quite a bit of wood on there yet. I don't know whether I would figure that land between the levees at \$25 an acre for wood. As I say in time that land will be all right.

Q. The land outside of the old levee was not used for any purpose, was it?      A. Was never used?

Q. Yes?      A. No. [288]

Q. That land out there was never used?      A. No.

Q. They could not use it?      A. No.

(Testimony of Arnold Zimmerman.)

Q. Coming back toward the old levee, between the old levee and the buildings, between the old levee and the farm houses, where the Scheibers live, there is pretty good land in there? A. Yes.

Q. How many acres to that have you figured it, of the very best land on the ranch?

A. Well, I would figure that from two hundred and fifty to \$300 an acre.

Q. \$250 to \$300 an acre? A. Yes.

Q. How many acres? A. About 200 acres.

Q. Now, then, as you go back the land is not so good, is it? A. No.

Q. How many acres in the next classification?

A. I think there is about 200.

Q. About 200 in the next class? A. Yes.

Q. How much an acre would you figure that to be?

A. Well, that makes 250, I mean to say, the rest of the ranch—that is all good land.

Q. You figure 200 acres to the good land and then you have got the balance of the ranch in one?

Mr. MILLER.—He said 450 acres of good land.

Mr. MACOMBER.—Q. Land of the first class was how many acres, 200?

A. Yes. Of course, I don't know exactly.

Q. About that, approximately? A. Yes.

Q. The next class, how many acres have you got?

A. 200 of the first.

Q. Then the balance of the ranch after you take out the 200 acres, what do you figure that to be worth? A. About 200, I guess. [289]

Q. About 200?

(Testimony of Arnold Zimmerman.)

A. I have not figured it out exactly what the ranch would bring.

Q. That would be \$250 an acre; is that right—about \$250 for all the ranch? A. Yes.

Mr. MILLER.—Do not confuse the witness.

Mr. MACOMBER.—Q. Mr. Zimmerman, in the first place you have got about 200 acres of the first class?

A. About 200 acres, more or less, whatever it is.

Q. The price of that you say was \$250 to \$300 an acre? A. Yes.

Q. Now, then, the next class takes in all the rest of the ranch—takes in the rest to the east—going to the east? A. Yes.

Q. That would be about 250 acres? A. Yes.

Q. And you say your figure for that would be about \$250 an acre?

The COURT.—\$200 an acre he said?

Mr. MACOMBER.—Q. What did you say, Mr. Zimmerman? A. Two hundred.

Q. Upon what do you base those figures, Mr. Zimmerman?

A. I have not exactly figured them; I was talking about what the land was worth, if anybody wanted to buy land.

Q. You base it apparently on what other lands were sold for?

A. Some a little more and some less; it is according to the land,

Q. Land values from 1900 to 1911 or 1912, at the

(Testimony of Arnold Zimmerman.)

time of the reclamation—land values kept pretty steady up there for ten years previous to the reclamation work, did they not?     A. Oh, yes.

Q. Before the reclamation?     A. Yes, it has been steady.

Q. The values run along about the same?

A. There has not been many sales lately.

Q. I am not speaking since the reclamation. I am speaking before the reclamation; before the reclamation for 10 or 12 years the prices kept along about the same level?     A. Yes.

Q. Without much increase?     A. Yes.

Q. Without any increase?     A. Yes. [290]

A. Yes, I know where the Saylor ranch is. A part of the Saylor ranch is very good, most of it is sandy, it isn't as good as the Garwood ranch. The Redfield farm that lies northeast of the Garwood place does not compare with the Garwood place, it is too low. The front part of the Redfield farm is good, yes, that is good land. There is less seepage water on the low land, the drainage land is not so good. I have not figured the value of the Redfield farm; I was not buying any ranch, I don't own any land up there now. I rented land.

### **Testimony of C. E. Weinerich, for Defendants.**

C. E. WEINERICH, called for the defendants, testified as follows:

My name is Charles E. Weinerich. I reside in Sacramento. I resided there in 1911. At that time I was in the office of the California Colonization



(Testimony of C. E. Weinerich.)

Company frequently. I had an office in the same office. I was secretary of the land company of which they were sales agents. Along about that time, about September, 1911, I saw Dr. Ramos and the plaintiff, Miss Garwood, in the office of the California Colonization Company frequently. They were inquiring for the sale of the land. I afterwards learned that it was the Scheiber ranch. I saw Mr. Scheiber there too, afterwards. Yes, before they purchased the property, I heard a conversation between Dr. Ramos and Miss Garwood. That was on "K" Street in 1911, in front of Turner Hall; they were walking on the street and I was immediately behind them. I know Miss Garwood said something about buying the place, and Dr. Ramos turned to her and said, "Dike won't [291] pay me the commission," and she answered, "Make him do it, my dear, make him do it." I reported that conversation to Mr. Crane. I went around and spoke to Mr. Crane about it.

#### Cross-examination.

Ramos said to Miss Garwood "They won't pay me the commission"—won't pay the commission or won't pay me, I am not positive whether it was won't pay me, or pay the commission—Dike won't pay the commission. [292]

#### **Testimony of Morris Scheiber, for Defendants.**

MORRIS SCHEIBER, called for the defendants, testified as follows:

Mr. HEWITT.—Q. Mr. Scheiber, you are one of

(Testimony of Morris Scheiber.)

the defendants in this case, are you? A. Yes. Q. Where do you reside now, where do you live? A. At Nicolaus. Q. Where were you born? A. In Switzerland. Q. Are you a citizen of the United States? A. Yes.

Mr. MACOMBER.—We object to that, Mr. Hewitt, upon the ground—unless it is shown that he was a citizen before the commencement of this action; of course I think it is immaterial anyway, but I want to introduce the objection that it is immaterial, irrelevant and incompetent.

Mr. HEWITT.—Q. Had you declared your intention to become a citizen of this country before this action was commenced? A. In this court here? Q. No, in any court, had you declared your intention, had you taken out your first papers? A. No. Q. I mean had you declared your intention to become a citizen before any action was commenced against you by Miss Garwood? A. That means if I had taken out my first papers, don't it? Q. Yes? A. No, I did not take the first papers out. Q. You did not take them out until after you sold the ranch? A. Until after I sold the ranch. Q. When did you come to America? A. In 1889. Q. Did you come here direct from Switzerland? A. Yes. Q. Had you been schooled at all in the English language before you came here? A. No. Q. Have you ever been to school in this country? A. No. Q. Then the only knowledge you have of the English language is such as you have acquired in contact with other people who speak the language, is it? A. Yes. Q. You know the ranch known as the Scheiber Ranch or

(Testimony of Morris Scheiber.)

the Nicolaus Allgier Ranch, do you? A. Yes. Q. You are one of the parties who sold the ranch to Miss Garwood? A. Yes. Q. Have you had the ranch [293] surveyed at any time? A. After we sold it, yes. Q. You employed Mr. Von Geldern, did you, to survey it, as one of the surveyors? A. Yes. Q. Did you point out or assist in pointing out the boundary lines of the place? A. Yes. Q. Did you point them out to him correctly? A. Yes. Q. How long have you lived in California? A. 26 years. Q. How long did you live on the Allgier Ranch? A. 19 years. Q. From whom did you buy it? A. From the Pacific Mutual Life Insurance Company of San Francisco. Q. What was the name of the ranch? A. The Nicolaus Allgier ranch. Q. What was the reputed acreage of the ranch? A. Well, the deed called for 600 acres more or less; that is the way we bought it. Q. Was it not generally known in that locality as the 600-Acre Ranch of Nicolaus Allgier? A. Yes. Q. Where is the Feather River located with relation to that ranch—where was it located before you sold it to Miss Garwood? A. Well, the Feather River was located on the west side and a ways it was located on the north side. Q. It formed the western and northwestern boundary of the ranch, did it, the river? A. Yes, it formed a kind of a bank. Q. The river was one of the boundaries of the ranch? A. The river was one of the boundaries, yes. Q. What use did you make of the ranch when you owned it? A. A dairy; dairying. Q. In what con-

(Testimony of Morris Scheiber.)

dition was the ranch when you bought it? A. The ranch was in miserable condition, as low down as it could be. Q. How were the improvements on it?

A. There were no improvements on it except a little bit of a shack and an old barn which Miss Garwood had torn down afterwards. Q. And the improve-

ments that were on it when Miss Garwood bought it were placed there by you and your brothers, were they, aside from that barn? A. How about that?

Q. The improvements that were placed on the ranch were put upon the same by you and your brothers, were they? A. Yes. [294] Q. At the time that

you bought it was any of the ranch planted to alfalfa? A. Yes—when we bought it you say? Q.

Yes. A. No. Q. What was it planted in, if anything, when you bought it? A. It was planted to

nothing, it was covered with weeds. Q. What use was made of it? A. It was pastured on. Q. All

pasture? A. That is the last year before we came there. Q. Did you rent the ranch some time be-

fore you contracted to buy it? A. Yes. Q. How many years before? A. About six years. Q.

About six years before you bought it you rented it?

A. Yes. Q. You bought it in 1899? A. Yes. Q.

Do you remember how much you expended in the matter of the improvements, buildings and fences on the ranch? A. I could not say exactly but then

I judge the expenses on the buildings and everything was between fifteen thousand and seventeen thousand and \$18,000. Q. During the time that you

had the ranch under lease did you seed any of it to



(Testimony of Morris Scheiber.)

alfalfa? A. Yes. Q. There was some timber land on the place, was there not? A. Yes, there was some there. Q. Where was that timber land located? A. On the other side of the levee between the river and the levee, below the levee. Q. Where did the county roads or private roads run through the ranch, Mr. Scheiber, at what point? A. Well, one road runs along the old levee down to Nicolaus, coming down from Nicolaus going to Vernon, and the other road comes kind of east from the Straigh place—it comes in from the east, north, and comes in by Saylor's place and comes by Saylor's place and comes over to the levee, at the corner where the levee and the road parts. Q. How near to the levee does the county road run? A. At the foot of the levee. Q. For how long a distance? A. Right along the levee for about I should judge a quarter of a mile. Q. Standing in a conveyance or seated in a conveyance can the timber land be seen on the other side of the levee from the road? A. Yes. Q. Are there places where there are [295] openings where you can see some distance? A. Yes. Q. Was that the case in September and October, 1911? A. Yes. Q. How much of the ranch did you seed to alfalfa, Mr. Scheiber? A. I should judge about 200 acres. I do not know exactly. Q. Was that fenced off from the rest of the ranch in 1911? A. Yes. Q. You used that for making hay? A. Yes; we used that for hay. Q. How many cuttings of alfalfa did you make from that land? A. Well, on that best part around there we got as high



(Testimony of Morris Scheiber.)

as 6 crops. Q. How much alfalfa to the cutting was generally produced? A. Well, I think about an average of about 6 crops, about one and a half tons to the acre, maybe a little more. Q. A ton and a half to the acre? A. Yes. Q. How many cows did you keep on the place? A. We did not keep the same amount all the time; when we first came there we did not have so many cows because the land was not in condition to keep many cows. Q. In 1911, in September and October, how many cows did you have? A. There were there about 167 or 170—I don't know exactly; 167, I think. Q. And horses? A. There were about 20 horses. Q. You had other stock, hogs and calves? A. Yes. Q. Did you plant any of the quarter section, that lower quarter to alfalfa while you had the place? A. No. Q. What did you use it for? A. We used it for pasture, and we cut some hay there too sometimes. Q. In going over the land could it be easily seen what use was made of it? A. Yes. Q. Have you known of any lands lying east of that quarter section being seeded to alfalfa? A. East you mean? Q. Yes. A. Yes. Q. What place? A. Harry Hanson's; that is about a quarter of a mile, and Mays is a quarter of a mile further out. Q. What kind of a stand of alfalfa did they have? A. Harry Hansen, he just got the third crop away about two weeks or three weeks, and Mays the same way—pretty good crops. Q. Was it a fair stand of alfalfa? [296] A. A fair stand of alfalfa. Q. How much per acre was being produced on the Hanson land at

(Testimony of Morris Scheiber.)

the cutting? A. I think about—

Mr. MACOMBER.—We do not care what he thinks, what he knows.

A. I think 6 tons to four crops.

Mr. HEWITT.—Q. Have you seen alfalfa growing on that 160 acres since the sale to Miss Garwood? A. Yes, there is about 40 acres right at the present time. Q. What kind of a stand is it. A. Fine. Q. Do you know how many times it has been cut? A. It was pastured in the spring and then they cut the second crop about three weeks ago, and it was a real good crop out there and they had a good start for another crop. Q. How is the land bounded by ranches? In your deed to Miss Garwood the land is bounded by certain ranches. It says “Being the whole of the so-called Nicolaus—Allgier Ranch situated below the town of Nicolaus, bounded on the east side by the farms of P. Straugh”—who owns that farm at the present time? A. That is now Mays, and a part of it is—I don’t know the name—that is on Mays’ there. Q. At that time when you sold it to Miss Garwood, was it bounded on the east by the Straugh land? A. May was already there—Johnnie Schwall was there. Q. And Phil R. Drescher—who owns that land now? A. That is Paul Drescher. Q. On the north by the Redfield farm—who owns that at the present time? A. At the north by the Redfield farm? Q. Yes. A. That is ours, Scheiber property. Q. On the west by the Feather River and on the south by the farms of Claus Peters and John Schwall. Claus

(Testimony of Morris Scheiber.)

Peters' ranch is shown on this map. Where was the John Schwall ranch—which one is that? A. John Schwalls was out from Martin Schwalls over to the east; the line runs from west to east. Q. Who owns that land now? A. That is Pete Schwalls. Q. Have you ever had any experience in alfalfa drowning out, being killed by water? A. Yes. Q. How long did it take for water to kill alfalfa? A. Well, it depends on how the weather is. In the spring, when [297] the weather is real warm and the water lays shallow, the water gets warm and that cooks it out a great deal quicker than it does in winter. In winter when the weather is real cool, sometimes it can lay on the alfalfa for two weeks, as long as three weeks, it won't hurt it very much. Q. Who farmed the place for the first month after Miss Garwood bought it, after she got her deed? A. Scheiber Brothers. Q. Under a contract with her for that purpose? A. Yes, that was a separate arrangement. Q. A separate matter? A. Yes. Q. It was under a contract, was it—you made a contract? A. We agreed to run the place for a month, until she got a man on the place to run it for her. Q. Now, do you know who furnished the items for this statement, Mr. Scheiber, noting the amount of milk and cheese sold—do you know who made out the statement? A. I guess it was Scheiber Brothers made it out, but this is printed. This was made out by White, Miller & McLaughlin. Q. You furnished the items for the statement, did you? A. Yes. Q. Now, we have on this state-

(Testimony of Morris Scheiber.)

ment, sale of four calves, \$24. Were those calves on the place when it was bought, or were they born there during the month? A. I think they were born during the month. Q. Then John Grausman, 6 calves, \$40. Were they on the place when it was taken over by Miss Garwood? A. No, they were born during the time we ran the place for her. Q. The Capital Dairy, milk, \$367.35. What would that represent? A. That was milk that we furnished to the Capital Dairy. We usually sold lots of milk to the Capital Dairy. Q. Was that milk that was produced on the place during that month? A. Yes. Q. American Cash Store, cheese, \$104.66; was that produced on the place during that month? A. Yes. Q. Then, Ennis Brown Co., cheese, \$306.15, was that cheese produced on the place during the month that [298] you were farming it for Miss Garwood? A. Yes. Q. Was there any cheese on the place that you turned over to Miss Garwood when you left? A. Yes. We did not sell her any. Q. What do you say, you did not sell her any? A. I mean—don't you mean if we didn't turn any cheese over when this month was up? Q. You did not sell any cheese to her? A. No, we did not sell any cheese to her. Q. When you quit at the end of the month, was there any cheese on hand? A. Yes, that is what I mean. Q. Was it made during that month? A. Yes. Q. How much cheese was on hand? A. About \$200 worth.

Mr. MACOMBER.—Pardon me, Mr. Hewitt, we do not want to be interrupting each other with ob-



(Testimony of Morris Scheiber.)

jections. Cannot we stipulate that all this testimony is objected to?

Mr. HEWITT.—I think the Court indicated that.

Mr. MACOMBER.—What did it say?

Mr. HEWITT.—That he did not want us to be too technical about objections, that it was not before a jury, and that he would consider all of these things when he read over the testimony.

Mr. MILLER.—It is just as well, if you have any objections, I think, to state your objections.

Mr. MACOMBER.—It will be understood that we will object to all this line of testimony as immaterial, irrelevant and incompetent.

Mr. HEWITT.—Q. What were you to receive under your contract with Miss Garwood for taking care of the place that month? A. \$400 for all the expenses. Q. How does the month of November, in the matter of dairying, compare with other months of the year with reference to results? A. Well, the month of November and December—especially the month of November, is usually the poorest for the income, that is, on a dairy. Q. What were your monthly receipts during the year prior to your sale to Miss Garwood from that ranch? [299] A. How much the receipts were, the income, you mean? Q. Yes, about what were your average monthly receipts? A. While we were on the ranch? Q. No, about how much cheese, and butter, and stock, and so on did you sell during the month—what was the average during the last year? A. Well, I think about \$2,000 a month, average. Q.



(Testimony of Morris Scheiber.)

About \$2,000 a month? A. Yes. Q. What were your expenses in the matter of labor, your own services and so on, and taxes during that period? A. Well, I think it took a good half of that. Q. About half? A. Yes. Q. That would be, then, in the neighborhood of about \$1,000 a month profit? A. Yes, maybe not quite as much as that. Q. Were there many months when your cheese and butter sales ran above that figure alone? A. Average, you mean? Q. Any month in the year? A. Some months were more and some months less that is why I figure the average about \$2,000 a month. Q. Now, when did you first see Miss Garwood?

Mr. MACOMBER.—We object to this testimony of income upon the ground that it is not the best evidence; the books and accounts that he has kept of these things would probably be the best evidence. Did you keep any books or accounts of your monthly receipts, Mr. Schieber? A. Not particularly. Q. The only thing you had was your labor account, time books? A. Yes. Q. When did you see Miss Garwood first? A. I seen her on the ranch first. Q. When? A. That was in September, 1911. Q. Who was with her? A. My brother, Joe. Q. On what part of the ranch was she? A. I seen her over in the old barn, where the old Nicolaus ranch barn used to stand. Q. Was that located near the old levee? A. Yes. Q. What was she doing there? A. She was looking at the land, and there was some cattle there, and she was sitting in the surrey, there, and Dr. Ramos and Dike, they were stand-

(Testimony of Morris Scheiber.)

ing there by the barn, by the old barn. [300]

Q. By the old barn? A. Yes; they were in the barn, too. Q. Did they have an automobile there?

A. They did not have the automobile over there, no.

Q. Did they walk over there? A. I guess they did.

Q. What was Miss Garwood there for, if you know?

A. To look at the land, I suppose. Q. Did she ask you anything about the boundaries of the ranch at that time? A. Yes. Q. *Why* did she ask it of? A.

She asked me. Q. Did you tell her what the boundaries were? A. Yes. Q. What did you tell her the

boundaries were? A. I told her the boundary there along Claus Peters' run, the south line from the

Nicolaus ranch, between Claus Peters and the Nicolaus ranch run—I pointed over toward the levee, across the levee, over to the old Feather River. Q.

The old Feather River? A. Yes. Q. Did you mention the fact that the river was one of the boundaries

of the place? A. Yes. Q. The north boundary, did you point that out? A. The north boundary is a

part—I could not tell her where the north boundary was just particularly—I told her, but I could not

point out the north boundary. Q. She could not see it from where you were standing? A. I could not see

the north boundary there from where I was standing.

Q. Did you say anything to her about its running between that ranch and the Redfield farm? A. Yes,

I told her it runs as far as to the Redfield farm. Q.

How did she happen to be there at the ranch, if you know? Do you know who sent her there? A. She

came over there with my brother. Q. Do you know

(Testimony of Morris Scheiber.)

where she came from? A. From Sacramento, as far as I know. Q. Previous to this time, had you any contract with the Colonization Company for the sale of this land? A. No, not at that time. Q. Did you have a contract at some previous time? A. We had one, yes. Q. One? A. Yes. [301] Q. Had that expired at this date? A. That was expired about two months before. Q. From that time forward did you ever have any written contract with the Colonization Company for the sale of this land? A. No. Q. Did you receive any communication in any way from the Colonization Company with reference to a sale of the land? A. I do not understand that. Q. Did any officer, Mr. Dike or other officer of the Colonization Company, telephone to you regarding a sale of the ranch? A. Yes, they telephoned to my brother. Q. Did they telephone to you? A. Not to me personally. Q. You did not talk with them over the 'phone? A. Not I, no. Q. Now, did Miss Garwood say anything to you at that time about the land being overflowed, or ask any questions about it being overflowed? A. She did. Q. What did you tell her? A. I told her a part of the land overflowed when the back-water comes up high, even that the levee breaks—we happen to have levee breaks—and we get flooded from the river. Q. Did you tell her anything, or did she ask anything about the back lands overflowing? A. She did. Q. What did you tell her in that regard? A. I told her that was overflowed, when the back-water comes up real high it backs up into the lower places there in the back field there—it

(Testimony of Morris Scheiber.)

comes up quite away into the ranch. Q. Could that be seen from the appearance of the place at that time, either from drift or other causes? A. I don't know. Maybe sometimes there is some drift hanging on the fences yet when the water comes up, but I could not say for sure whether there was any drift at that time or not. Q. Was the land plowed? A. No. Q. What was it used for? A. For pasture. Q. You had always used it for pasture, had you? A. At that time we did. Q. Now, Miss Garwood stated in her testimony that you had [302] told her all the good things about the ranch, and to tell her some of the bad things about the ranch. Did she use any such language there? A. No. Q. Now, she states that you pointed out a green line as being one of the boundaries of the place. What is the condition of the levee in September, or what was it in September, 1911—was the grass growing on it, or was it dry? A. No, in the fall usually the levee is pretty dry there; there is no grass growing on the levee there. Q. All dead grass? A. All dead grass and dust on it. Q. Was there any green land there to be seen? A. The trees. Q. That is over on the other side of the levee? A. Over the other side of the levee. Q. They could be seen to extend quite a distance westerly from the levee? A. Yes. Q. She spoke of a white house or stable. Was there any white house located anywhere near the levee on that ranch? A. No. Q. Was there any white stable there? A. The old barn. Q. Was it painted white? A. No; that was an old barn; it was not painted, and it was not whitewashed, either.



(Testimony of Morris Scheiber.)

Q. Had it ever been painted? A. Not that I know of. Q. Now, again, did you ever tell Miss Garwood that the levees on the ranch were all built, and she would not have any assessment to pay? A. No. Q. Did you ever tell her anything *about*, while she was there on the ranch, about getting back \$5,000 and some odd? A. No. Q. Did you make any untruthful representations to Miss Garwood concerning that property in any way? A. No. Q. When did you next see Miss Garwood? A. At Mr. Dike's office in Sacramento. Q. Do you know about what time that was? A. That was in the afternoon; I think it must have been about two o'clock, something like that. Q. When she was there at the ranch, Mr. Scheiber, when you met her there, did you answer all of the questions that she asked you about the ranch, truthfully? [303] A. I did. Q. How did you happen to go down to Dike's office, or the Colonization Company's office? A. Well, they told us to come down to make the arrangements for the sale. Q. You went down? A. We went down. Q. Did you have any conversation with Miss Garwood at that time? A. In Dike's office, yes. Q. In Dike's office? A. Yes. Q. Did she again ask you at that place anything about the acreage on the ranch? She did. Q. What did you tell her? A. I told her the deed says 600 acres more or less, we never had it surveyed; that is the way we bought it, and that is the way we sell it. Q. Did you ever place a price by the acre upon that land? A. No. Q. Did you meet Mr. Ramos there? A. Dr. Ramos was there, yes, Miss Garwood, myself



(Testimony of Morris Scheiber.)

and my two brothers, Joe and John, and Dike was there part of the time in that back room; most of the time he was called to the front office there. Q. Did they try to get the property for any less than the \$75,000? A. Yes, they did. Q. Who tried to? A. Miss Garwood and Dr. Ramos. Q. Did Mr. Dike say anything to you about it? A. Mr. Dike wanted it, too, yes, sir; he was talking about it. Q. But you insisted on the full price of \$75,000 for the ranch? A. We told them we wanted \$75,000 for the ranch and the hay has got to be bought separate. Q. Did you have any conversation with Dr. Ramos concerning that matter of getting a reduction? A. Yes. He tried to get it cheaper; he wanted us to throw the hay in with the ranch. At first he tried to get the ranch cheaper, but we told him that was our price, and we would not sell it any cheaper; then they tried to get the hay, wanted us to throw the hay in with it, and we told them no, we would not do it; if they wanted it they could take it, and if they did not want it they could leave it be, that we had had a good success on the ranch, and we did not care if they did not want it that way, [304] they could leave it be. That is the way we spoke to them. Q. Did they try to get you to reduce the price more than once? A. I don't know. I think Dike did before, too. Q. Did you have any conversation with Dr. Ramos with reference to what he would do under similar circumstances? A. Yes, right there in the office, he, Dr. Ramos, wanted us to throw the hay in, he thought the hay belonged with the ranch, and I told him no, and

(Testimony of Morris Scheiber.)

he thought yes, it ought to go with the ranch. He says, "You made that hay on the ranch and that ought to be thrown in." I said, "Well, Dr. Ramos," I says, "Doctor, you are a doctor, ain't you?" And he says "Yes." I says to him, "Now, for instance if you have got a practice some place and have an office and you practice during the spring, and in the spring usually there is most of the people getting sick, in the spring more people sick than during the fall, and for instance you kept your office during the spring and practiced, and then in the fall you might sell out, you would not give that money back to that man you sold out your office to—what you made during the spring on your patients"; then he laughed and he says, "no, that is right." Miss Garwood laughed, herself, too. Q. Was a deposit paid, or had it been put up at that time, do you know? A. Yes, she deposited some money on it. Q. When did you next see Miss Garwood? A. Next I seen her in Mr. White's office. Q. When was that? A. That was a day or two afterwards. Q. Was it when the contract was drawn? A. Yes. Q. Who drew the contract? A. Mr. White. Q. Did you employ him to draw the contract? A. Yes. Q. Did you ask him to draw the contract? A. Yes. Q. Had you been to Mr. White's office before you and Miss Garwood went there? A. No. Q. It was when all of you went together that you asked him? A. Well, we all went there [305] together. Q. Did he draw the contract that day? A. He drew the contract, yes. Q. Now, who was there when the contract was drawn? A. I and my

(Testimony of Morris Scheiber.)

two brothers, Miss Garwood and Dr. Ramos and Dike and Mr. White. Q. Was anything said at that time

and place about getting the property any cheaper?

A. Yes, they kind of started in to argue about the price again with us. Q. What did you tell them?

A. Well, we told them we did not want to sell it any cheaper, and that is the end of it. Q. Was the con-

tract read over there in the office? A. Yes. Q.

Do you recall any conversation that took place there with reference to the acreage of the ranch? A. Yes.

Q. What was said—anything said to you? A. Miss

Garwood asked me there again about the acreage. Q.

What did you tell her? A. I told her we bought it

as 600 acres more or less, and we never had it surveyed, and we would sell it as we bought it. Q. Did

you hear her during the reading of the contract—who had the contract? A. Mr. White. Q. Did you

hear her— A. I think he gave her a copy, too, to read when he read it. I can't remember, though, for

sure, but I have got an idea about it. Q. Did you

hear her during the time of the reading of that contract, when it came to that portion of the description,

600 acres more or less, say "Stop right there, Mr.

White, I want to know what that means. It is my

understanding that I am getting 600 acres of the finest alfalfa land in the state of California," or words

to that effect? A. No, I did not hear it. Q. Were

you in a position to have heard it if she had used that language? A. Yes, I could have heard it if she had

used it. Q. Where did you sign the contract? A.

In White's office. Q. What was done with the

(Testimony of Morris Scheiber.)

deposit money after the contract was signed? A. It was put in the Fort Sutter National Bank, in escrow.

[306] Q. Did Miss Garwood say anything to Mr. White in that conversation in his office at that time about she thought she was buying a pretty good ranch?

A. Yes, she did. Q. What did Mr. White say, if anything, in reply? A. Well, Mr. White said, "I don't

know anything about the land, but as far as I know it is a good neighborhood, a good location, up in Nicolaus, and the alfalfa land raises good crops. Q.

Had you and your brothers previously agreed with the Colonization Company to pay them a commission if they would find a purchaser for the ranch? A.

Well, that was understood when he was going to bring Miss Garwood up, with my brother Joe, that is, he asked us if the ranch was for sale, yet. Q. That

was a conversation had over the telephone, was it not? A. Yes. Q. Were you on the same line that

your brother was at the time, the same telephone line?

A. I was. Q. Did you hear the conversation, too?

A. Well, I just heard a little of it, that is all. Q.

But they asked if the place was for sale? Yes. Q.

What was the reply? A. Well, my brother told them yes, the place was for sale yet if we got our price.

Q. Was the price mentioned? Did you hear the price mentioned over the 'phone? A. Yes. Q.

What was the price? A. \$75,000. Q. Was there

any other condition attached to it? A. Yes. Joe, my brother, told them if the party wanted to buy the ranch they have got to buy the personal property, too.

Q. The contract was signed that day, that is, on the



(Testimony of Morris Scheiber.)

27th of September, according to the contract. After that, when did you see Miss Garwood again? A. I have not seen Miss Garwood any more after that until when we made the deed out. Q. Until the deed was made out? A. Yes. Q. When did you pay the Colonization Company the commissions for selling, or for finding a purchaser? A. That [307] was a few weeks after the deed was given her. Q. Two weeks? A. About a week or two afterwards, we made out a check, and we told Dike that as soon as we received the money from back East where she made out the check from, we would pay him his commission. Q. How much commission did you pay him? A. \$3,750. Q. Now, did you have any knowledge of the payment of any portion of those commissions to Dr. Ramos at any time during the negotiations for the sale of that place?

Mr. MACOMBER.—This is objected to, upon the ground it is immaterial, irrelevant and incompetent.

A. No.

Mr. HEWITT.—Q. When did you first hear about any commissions having been paid to Dr. Ramos? A. That was long after we gave her the deed. Q. In your talk with Miss Garwood when she was on the ranch, did you mention to her anything about where you got your wood for your domestic purposes? A. Yes, when we were over there at the old barn, there. Q. What did you tell her? A. She asked me what that land was good out there for, and I told her we got the wood out there, firewood, and she kind of inquired if there was any market up in this direction



(Testimony of Morris Scheiber.)

for wood, and I told her, "Yes, there is some market in the fall, some of the plains' people come from the river and get their wood for the winter." Q. During the time that elapsed between your signing of the contract for the sale of that property and the giving of the deed to Miss Garwood, did any other parties approach you to buy the place? A. Yes. Q. Did you receive any offers from other parties to buy?

Mr. MACOMBER.—This is objected to upon the same ground, immaterial, irrelevant and incompetent. A. There was a man there with an automobile came to the place and he asked me—he heard this place [308] was for sale, and I told him the place was for sale, but the place is sold, or as much, as we got some money on it, paid down on it; then he was awfully sorry that he didn't get there before, and he asked me how much we got for it, and I told him \$75,000, and he says, he only wished he knew it, he would like to get that place, and he would take it; he told me if I thought whether the party would take the place, and I told him yes, I thought they would take it, because they deposited quite a sum of money on it, and I did not think they would leave that money go; and then he says, "In case"—he gave me his card, and he says, "In case the party won't take the land, let me know immediately, and I will take it."

Mr. HEWITT.—Q. At the same price? A. At the same price, at \$75,000. Q. Where did this party live? A. He said he came from Colusa. Q. Do you know his name? No, I could not tell the name. I had his card for a long time, I saved it, and then

(Testimony of Morris Scheiber.)

afterwards, I don't know, I must have lost the card or mislaid it. I was not looking for the card anyhow, after we had the ranch sold. Q. At the time of the making of the deed, or when the deed was made out, how was the purchase price paid? A. Well, she paid down \$5,000 when we made the contract out, and then the balance of the money—she made out a check for the balance of the money for the real property—I think the balance of the money must have been something like \$30,000—then she paid \$2,000 on the personal property. Q. How was the balance of it paid? A. The balance of the personal property—Q. The real property. A. We took a mortgage for \$20,000. Q. From her? From her. Q. Has that mortgage been paid? A. That mortgage has been paid, yes.

Cross-examination.

Mr. MACOMBER.—Q. Mr. Scheiber, you don't remember that man's [309] name? A. No. Q. You never saw him before? A. I never saw him before. Q. Is that the only offer you received? A. Many times we got offers. Q. For \$75,000? A. They never mentioned particularly; I could not say just particularly, but afterwards we could have sold. Q. At the time that Dr. Ramos and Miss Garwood were up on the ranch, when he tried to get you to let the hay go in with the ranch, that was the first time? A. He never tried it the first time. I was not there the first time, I did not see him. Q. That the first time they were up there? A. I did not see him the first time. Q. Then, as I understand you, it was not when they were on the ranch the first time

(Testimony of Morris Scheiber.)

that they tried to get you to take the hay off, let the hay go with the land? A. No. Q. It was when they were up there the second time—

Mr. HEWITT.—I do not think there is any testimony here that any effort was made when they were on the ranch, to get hay thrown in.

Mr. MACOMBER.—Q. Weren't they on the ranch when you were talking to them? A. When Dr. Ramos and Miss Garwood were there the first time? Q. Yes. A. I was not there. Q. Where were you talking, what part of the ranch were you standing on with Dr. Ramos when you told him about being a doctor and charging his patients? A. I did not talk to the doctor. Q. You said, "Doctor, suppose you had a practice and you had patients in the spring, and you sold out your office in the fall"— A. (Intg.) I told him that in Dike's office. Q. Now, Mr. Scheiber, did you tell her to what extent the water overflowed in the rear? A. I did. Q. What did you say? A. I told her when the back water comes up from the back, all the lower part of the land gets flooded. Q. How long did [310] you tell her it stayed over the land? A. I never mentioned it. Q. You did not tell her? A. No. Q. What did she say when you told her that? A. She did not say anything. Q. She did not say anything? A. No. Q. In reference to that Redfield farm that lays over on the north-east side of this place, of the Nicolaus place, isn't there a white barn there—there is a white building there? A. There is a white building there at the Redfield place. Q. On the Redfield place? A. Yes.

(Testimony of Morris Scheiber.)

Q. Now, I didn't get what you meant when Mr. Hewitt was asking you about places where you could see through. What did you mean by openings on the levee there? A. I suppose that is from the road, when you came down along the levee, you know what it is— Q. (Intg.) Yes. A. (Continuing.) When you go by there and look in towards the woods there, you can see spaces where there ain't any wood; some kind of space where the trees are away; you can see in away there toward the river, can't you? Q. I guess so. A. That is what he means. Q. What did you say about the land going over the levee? A. I did not say the land going over the levee. I said the line goes over across the levee to the old Feather River, clear over to the Feather River. Q. You told her that the land went to the river? A. Yes. Q. Did not say that any land went across the river? A. Across where? Q. Did you tell her any land went across the river? A. No, not across the river, says, "Over to the old Feather River." Q. Do you know whether she understood at the time or not that the river was up against the levee or whether it was away back from the levee? A. I don't know. Q. You don't know? A. No; she did not say anything. Q. Now, in respect to these improvements, you say that since you were on the place you have put in about how many thousand dollars in improvements? A. We put in from \$15,000 to \$18,000 in improvements. Q. In respect to these improvements, what were they? [311] A. What were they? Q. Yes. A. You have seen the build-



(Testimony of Morris Scheiber.)

ings, haven't you? Q. Yes, but I don't know anything about those things. A. Well, we put all the buildings there, fences—all the fences; put in alfalfa; that includes all; I mean the improvements that we put there, the buildings and pipes and tanks and all of those things. Q. Now, as a matter of fact, there were fences on the place when you went there, weren't there? A. No. Q. Was not the place fenced there when you went there? A. There was no fence there to it. Q. No fences? A. No; here and there a wire stretched; that would not keep the cattle out; the fence had to be fixed all around the fence. Q. Now, as a matter of fact, Mr. Scheiber, when you left that place, were not those fences in a rotten condition? A. The fences were in good condition. Q. As a matter of fact didn't they fall down and let the cows into the alfalfa, so that six of them died? A. No; they broke them down, I suppose. Q. With respect to the fences and buildings, how many buildings did you put up? A. Well, there is the house there, isn't there? The big barn, the tank-house, feed-house, little out-houses there, shacks and things—cheese-room and all those things. Q. That cheese factory was sold extra, was it not? A. The cheese factory? Q. That was put in as personal property, was it not? A. The building? Q. Yes. A. I should think not. Q. How much did you say these buildings were worth at the time you left that ranch? A. I guess the buildings and improvements were worth about the same—Q. (Intg.) Do you mean to say now that there were no buildings on the ranch when you went there? A.



(Testimony of Morris Scheiber.)

Excuse me; that means when we left the place. Q. When you bought it, I mean. Read the question.

(The last question repeated by the reporter, as follows): [312] "Q. Do you mean to say now that there were no buildings on the ranch when you went there"? A. No; there was nothing but a little house and the old barn. Q. No buildings, and no fences? A. No fences to amount to anything. Q. What barn was it that fell down, Mr. Scheiber? A. That was the old Nicolaus Algier barn; the old man Nicolaus Algier he built that barn when he first came to this part of the country. Q. Was there not another barn that fell down? A. No. Q. You say you paid between \$15,000 and \$18,000 for improvements. Did you ever keep any account of those things? Did you keep any records that you can bring here to show that? A. I could bring some records, yes. Q. You did not bring them, though? A. I did not bring them along, no. Q. This figure that you gave us, between \$15,000 and \$18,000, is an approximation? A. That is an approximation, not less than \$15,000; I do not say more than \$18,000. Q. You say in respect to that lower section down there, that quarter section of 160 acres, you used that for pasture? A. Yes, we used it mostly for pasture; we cut some hay there a few times. Q. Why didn't you put that in alfalfa? A. Because we needed it for pasture. Q. Wouldn't you have been able to get along if you had put it in alfalfa? A. We could have got along, but we could not have let them into the alfalfa in the spring, we wanted some natural feed for the cows, something green; if

(Testimony of Morris Scheiber.)

we let them into the alfalfa, we would lose some of the cows. Q. Now, you know as a matter of fact that if you put that into alfalfa you would get very little alfalfa there, don't you? A. Very little—where do you mean? Q. That quarter section. A. I think that quarter section raised about four crops of alfalfa. Q. You think it raised four crops, do you? A. Yes. Q. That is, provided it did not get [313] washed out? A. It won't get washed out, that is when this levee proposition is completed. Q. But it would have been washed out before? A. Maybe some of the little lower places there. Q. As a matter of fact, it was planted by George Duff two years ago, and one year later it was all washed out, was it not? A. No. Q. In fact, was not a large portion of it washed out? A. Maybe some washed out. Q. In respect to that which is left, you said a moment ago, in respect to the alfalfa that Miss Garwood put in, a portion of which is still standing, you told Mr. Hewitt that was a fine stand of alfalfa, did you not? A. It is a fine stand of alfalfa. Q. Don't you know it is a very rotten stand of alfalfa? A. I say it is a fine stand of alfalfa. Q. How many tons of alfalfa to the acre will that quarter section cut out there? A. I could not say exactly, but I think it will make from 6 to 7 tons average, anyhow 6 an acre. Q. When you were at Mr. White's office, you say that Miss Garwood did not interrupt him, did not say anything about more or less? A. I never heard anything about that thing. Q. Now, when you talked to Miss Garwood about the acreage, when she

(Testimony of Morris Scheiber.)

was up at the ranch and asked about the acreage, you said 600 acres more or less? A. Yes. Q. You always said "more or less"? A. 600 acres more or less; we never had it any other way. Q. By the way, Mr. Scheiber, when did you first get acquainted with that expression "more or less"? A. We bought it as more or less, and we intended to sell it as more or less, because we never had it surveyed, and we did not want to go to the expense of surveying the place. Q. Now, Mr. Scheiber, you say that you never had the place surveyed? A. Not before we had it sold. Q. Now, did you ever have any occasion to consider how many acres you had? A. Well, no—we could not consider very much about it. Q. You never thought about that? A. We [314] guessed at it. Q. As a matter of fact, didn't you have a surveyor from Sacramento one time survey that? A. After Miss Garwood was in possession, yes. Q. But before you sold it to Miss Garwood? A. No. Q. Do you mean to say you never had that place surveyed from the time you bought it from the Pacific Mutual until you sold it to Miss Garwood? A. No. Q. You never had a surveyor on that place? A. No. Q. How many acres did you figure—at the time you sold it to Miss Garwood and previous to that, how many acres did you think you had? A. Well, I didn't know; I thought there was maybe less than 600 acres and maybe more. Q. When you bought that land of the Pacific Mutual, you paid \$26,000 for it? A. We paid \$27,000. Q. Are you sure it was not \$26,000? A. I am sure. Q. What

(Testimony of Morris Scheiber.)

was the \$27,000 for? A. There was an extra thousand. Q. What was that for? A. There was \$1,000 paid cash and the balance—

Mr. HEWITT.—We object to that as immaterial, irrelevant and incompetent. A. \$26,000 was installments, and \$1000 we paid down cash.

Mr. MACOMBER.—Q. Isn't it a fact you paid \$1000 down and there was \$25,000 remaining? A. There was \$26,000 left. Q. You were to pay the balance at \$500 a year? A. Yes, with interest. Q. Now, Mr. Scheiber, here is what I want to get at: When Miss Garwood was on the ranch, did you, when you were talking with her about the boundaries, pointing out the boundaries—where were you standing? A. Over there where the road makes a bend, at the corner where the old barn used to be, right in the land, not on the road. Q. Can you fix the place on this map, here, with a cross in lead pencil? A. I don't know much about a map; I don't understand much about it; but you know where the old barn used to stand; you have been there. Q. Where was it you were standing? Anywhere near the [315] ranch house now where George Duff lives? A. No, I was not over there. I was over there where the old barn used to be, over where they built the new levee, near where they built that new levee down and cut across a part through the Nicolaus ranch into Claus Paters, where they made that new channel. Q. You can't say now whether she understood about the river being up against the levee, or not? A. She understood perfectly. I told her that the land goes clear



(Testimony of Morris Scheiber.)

out to the river, over across the levee out to the old river there, and I pointed it out to her. Q. Did you tell her how much land there was out there? A. No. Q. Did she ask you? A. No. Q. You did not point out any land across the river? A. Across the river? Q. Across the levee. A. Across the levee? Q. Outside of the levee. A. Yes, I told her over across on the other side of the levee, clear over to the Feather River, the old Feather River. Q. You seem to have a very good recollection of this thing at the present time? A. I have. Q. Do you remember giving your deposition before Mr. Devlin, in Sacramento? A. Yes. Q. You remember that time? A. I do. Q. Now, Mr. Devlin asked you this question, on page 35, about the fourth or fifth line from the top: "Q. Did *she* *you* anything about cattle? A. Not as I know of. "Q. She asked you questions, but you don't know what they were: "Is that correct? A. She asked me about the sale, etc. "Q. Do you remember any questions she asked? A. No." Q. Did you give that testimony? A. I didn't remember at that time.

Mr. MILLER.—I object to that as immaterial, irrelevant and incompetent.

Mr. MACOMBER.—You remember giving your deposition before Mr. Devlin in Sacramento? A. I do. Q. Before a shorthand reporter, and your attorney, Mr. Hewitt was present at the time. Do you [316] remember giving that testimony? A. I remember. Q. You gave those answers? A. Yes. Q. This is what Mr. Devlin said: "Q. Do you re-



(Testimony of Morris Scheiber.)

member any questions she asked you?" And you answered "No." A. I did not remember it then. Q. "Q. She did ask you other questions that you don't remember. "Is that correct? Tell me she did or she did not. "A. She asked questions. "Q. You don't remember what they were? A. No, sir. A. That is right, I didn't remember it. Q. You didn't remember them then? A. I didn't remember at that time. I remembered afterwards. Q. "You made answers to them, but you don't remember what the answers were: Is that correct? "A. I give her the right answers to what she asked me. "Q. But you don't remember what the answers are now? A. No." Did you give that testimony?

Mr. MILLER.—The same objection. A. I don't remember the answers or questions that she asked me, no.

Mr. MACOMBER.—Q. You did not remember them then? A. I did not remember them then. Q. But you remember them all right now? A. Well, I remembered it afterwards. Q. You remembered it afterwards? A. Yes. I was kind of rattled.

Q. Now, as a matter of fact, isn't it possible that some things you don't remember now? A. Yes, I do. Q. You say you remember everything now? A. I don't know as I remember everything, but whatever I say is true. Q. You told her the line went over the levee: Is that correct? A. Over across the levee, clear over to the old Feather River, and I pointed the way the line goes. Q. And then you told her it went along the fence, did you? A. I never

(Testimony of Morris Scheiber.)

said along the fence. I pointed over that way, the fence run that way; you could not see the fence on the other side of the levee. We was not on top of the levee at that time. I could not show her the fence on the [317] other side of the levee. Q. At the time you were with Miss Garwood? A. I was. Q. Where were you, in a buggy together? A. No, I was not in a buggy. I happened to go by there. Q. Were you not driving her to the station? A. I came from Nicolaus and went by there, and they were there. Q. Mr. Scheiber, it seems that there is some confusion here. Now you say that the day they came first you did not see them at all? A. The first time I did not. Q. At the time that they first called at the ranch, *where were*? A. I was at home; I was not living at the ranch at the time. Q. You were not living on the ranch at that time? A. No. Q. You did not see them at all the first day? A. I did not see them the first day. Q. That was after the sale when you were talking with her? A. No, that was before the sale. Q. Before the sale? A. Yes. Q. It was after you met her in Dike's office? A. No, that was before we met her in Dike's office. Q. Before you signed the contract? A. Yes. Q. Now, are you sure of that? A. I am sure of that. Q. What day was it—it was before you signed the contract to sell the place at all? A. Before we signed the contract, that was before. Q. Do you remember what day it was that you signed the contract? A. I think it was the 27th of September. Q. The 27th of September? A. Yes. Q. Was it

(Testimony of Morris Scheiber.)

before that? A. It was before that, yes. Q. You are positive? A. I am sure. Q. Now, who was with Miss Garwood at the time? A. My brother Joe and Dr. Ramos, Dike and my brother John; they were over near the old barn, standing there near the old barn. Dr. Ramos, I seen him coming out of the barn, too, and Miss Garwood was sitting in the surrey a little further south from the barn, and my brother was standing there talking to her, and I happened to go by there— I went there and I got to talking with them, too. [318] Q. You are positive it was before you met them at Dike's office? A. I am positive it was before we made the sale, it was before that. Q. Who came out with them at that time? A. I don't know how they came. Q. Who came out with them? A. I think there was nobody but Miss Garwood, Dr. Ramos and Dike; I think those people were together. Q. If you are positive of that, then, as a matter of fact, she must have visited the ranch twice before you met her in Dike's office? A. That is what she did. Q. She did? A. Yes. Q. Are you sure of that? A. Yes, because my brother said she was there once before; they told me about when she was up there. Q. Do you remember what day of the week this was that you are speaking about now? A. I can't remember that. Q. Do you remember what day of the month it was? A. No, I couldn't remember the day of the month. Q. How long was it after the time that she talked with your brother Joe? A. After she was there the first time, you mean? Q. Yes. A. I don't know;

(Testimony of Morris Scheiber.)

I think it must have been a few days, anyhow, four, or five, or six days; I could not tell exactly; it was anyhow four or five or six days, something like that.

Q. After she was there when she talked with your brother Joe? A. After she was there the first time.

Q. Here is some testimony that you gave before Mr. Devlin, commencing at page 37, Mr. Scheiber. It says here, "Did you tell her anything about where the west boundary was? Did you tell her anything about it yourself? A. Yes. "Q. You did tell her"—

Mr. MILLER.—We object to your reading from any purported copy of a deposition. If you have the original depositions here they must be produced. We object also on the ground that no foundation has been laid for any of these questions.

Mr. MACOMBER.—Have you got a copy of the deposition? A. I have [319] got what purports to be a copy of the deposition. I don't know whether it is or not. It is not the same as yours.

Mr. MACOMBER.—Let me see if it is.

Mr. MILLER.—You cannot use ours, because it is not the original.

Mr. MACOMBER.—Q. "Did you point out the east boundaries." Is that the way yours reads? It should be the west boundaries, shouldn't it, on page 38, the second line from the top?

Mr. HEWITT.—We ask that our objection be extended to all of the questions asked by counsel. What counsel has read from is a purported copy of the depositions, and one which it appears never has



(Testimony of Morris Scheiber.)

been signed or read over by this defendant.

Mr. MACOMBER.—Q. “She went by there and I went by there with her one time.” Did you give that testimony?

Mr. MILLER.—We object to that as not being a correct quotation from the testimony.

Mr. MACOMBER.—Q. Do you remember giving that testimony, Mr. Scheiber? A. I don’t remember that. Q. You don’t remember? A. No. Q. I will continue reading from this: “She went by there and I went by there with her one time. “Q. Did you go by with her? A. That was after the sale was made that I went by.” “Q. Do you remember that? A. No, I don’t remember it, but I went by after—one time I brought her to the station after she was in possession of the place already. That is maybe what it meant. Q. “I mean at the time when she was up there, either one of those two or three times that you speak of before the contract was made, when she was up there on the place—what I want to find out is whether or not you showed her where the place was. Did you show her what you owned? “A. No, sir. I never went around the place.” Did you give that testimony? A. I don’t remember that. Q. You don’t remember [320] giving that testimony? A. No. Q. Is that true?

Mr. MILLER.—We object to the question as immaterial, irrelevant and incompetent, and instruct the witness not to answer.

Mr. MACOMBER.—Q. Did you ever, during the time that she was up there, that is before you met



(Testimony of Morris Scheiber.)

them at Dike's office, point out the place to her?

A. I did. Q. That was on the second time she was there, but before she signed the contract in Dike's office? A. That was before she signed the contract in Dike's office. Q. This deposition goes on to read: Q. You did not? A. No, sir." Do you remember giving that testimony?

Mr. MILLER.—We object to that as unintelligible, absolutely impossible for anybody to tell what is meant.

Mr. MACOMBER.—It follows right after what I read previously. A. I don't remember it. Q. Now, Mr. Scheiber, I have read to you what Mr. Devlin questioned you about in respect to whether or not you showed her the place; at any time, any one of these times that you saw her on the ranch before you signed the contract. Now, in this deposition which you have to Mr. Devlin in answer to that question you said, "No, I never went around the place. "Q. You did not? A. No, sir." Did you give that testimony?

Mr. HEWITT.—We object to that question as being immaterial, irrelevant and incompetent, and that no foundation has been laid therefor, and that if any questions concerning the conversations which have taken place between defendants at any point are to be submitted to him, the whole of the conversations must be submitted.

Mr. MACOMBER.—Q. Answer the question, Mr. Scheiber. A. How *you* you mean? Read it over again. [321]

(Testimony of Morris Scheiber.)

(The last question repeated by the reporter.)

A. I don't remember that.

Q. You do not? A. No.

Q. Now, then, whether or not you did make that statement, is that statement true or not? A. I did not go around that ranch with her.

Q. You did not go around with her? A. I did not go all around the ranch with her.

Q. Did you give this testimony:

“Q. Did you have any conversation with her or say anything about the river being one of the boundaries of the place? A. I said the land goes over the levee.

“Q. Did you mention the river? A. I cannot tell.” Did you give that testimony?

Mr. HEWITT.—We make the same objection. A. I don't remember anything about that.

Mr. MACOMBER.—Q. You don't remember whether you gave that or not? A. No.

Q. Now, Mr. Scheiber, at this time that you speak about, that you told her that the land went over the levee, who was with her at that time? A. My brother, Joe.

Q. He was with you at the time? A. Yes. Q. Who else was along?

A. Well, there was nobody just present there.

Q. Just you and your brother Joe and Miss Garwood? A. Yes. Q. What kind of a conveyance was she in? A. She was seated in a surrey there.

Q. Who was driving the surrey? A. I don't know. I guess my brother brought her over in the surrey.

(Testimony of Morris Scheiber.)

Q. It was down on the county road? A. It was right near the county road there, yes. Q. When you told her that, what did she say? A. When I showed her the line, you mean? [322] Q. When you told her it went over the levee. A. She did not say anything. Q. After she bought the ranch, did you ever talk about it then, about where her land ran to? A. After she had the ranch? Q. Yes. A. After she was in possession? Q. Yes. A. No. She was on the ranch a while afterwards, maybe a week or so afterwards, and I brought her to the Strickland station, to the Northern Electric station, and we were just talking about business there, that is all, about cows and horses and such things as that. Q. Did you at that time tell her anything about the land and its boundaries? A. I showed her the boundaries there. Q. At that time? A. At that time, out there.

Mr. MILLER.—Q. Do you mean the first time you saw her on the ranch you showed her the boundaries? A. The first time I saw her on the ranch I did. That means afterwards, when I brought her out to the Strickland station.

Mr. MACOMBER.—Q. Then you pointed them out again when you went to the Strickland station? A. I didn't point it out. We just went along the road and she seen the line that I showed her there. She was in possession at that time.

Redirect Examination.

Mr. MILLER.—Q. Mr. Scheiber, on the occasion referred to in Mr. Devlin's office, when they were questioning you there, didn't they ask you these

(Testimony of Morris Scheiber.)

questions, and didn't you make these answers: "Q. Did you say—referring to the boundary—it was the levee or the river or the fence, or anything of that kind? A. The west boundary, I said, come over to the river." Did you tell her that at that time? A. I remember telling her. Q. What is your recollection about being asked this question and giving this answer— [323] A. It is over to the river, I told her that.

Mr. MACOMBER.—You are reading from the same depositions?

Mr. MILLER.—I don't know whether I am reading from the same depositions or not. I am asking him some questions.

Q. Mr. Scheiber, you said that some time later, that is, after the first time you saw her on the ranch, some time later than that you either took her to Strickland station or brought her from Strickland station. A. I took her to Strickland station. Q. That was some weeks after the first visit, was it? A. That was some weeks after she was in possession already, after the first of December.

Q. After the first of November? A. After the first of November. Q. First of November, you mean? A. Yes. [324]

### **Testimony of John Scheiber, for Defendants.**

JOHN SCHEIBER, called for the defendants, testified as follows:

Mr. MILLER.—Q. Your name is John Scheiber? A. Yes. Q. You are one of the defendants in this action, are you not? A. Yes. Q. You and your two

(Testimony of John Scheiber.)

brothers owned the property that you sold to Miss Garwood? A. Yes. Q. You remember her coming up to the ranch? A. Yes. Q. She came up to the ranch to look at the property before you made any contract with her, did she not? A. Yes. Q. Do you know how many times she was there altogether? A. Altogether, she was there three times. Q. Before the deed was made? A. Yes. Q. Did you also meet her and talk to her and Dr. Ramos and others in Mr. Dike's office before the contract was signed? A. Yes. Q. After that, did you go to Mr. White's office and sign the contract? A. Yes. Q. Now, on all those different times that you saw her before the contract was signed and afterwards, there was some talk about the place, was there not? A. Yes. Q. Is your recollection very good as to what those conversations were? A. Some of them. Q. Some you remember very well? A. Yes. Q. Some you do not remember very well? A. Some I do not remember very well. Q. When you talked about the place, or anybody else talked about the place in your presence, did they tell the truth about it? A. Yes. Q. Did you try to keep anything from her at all? A. No. Q. She was shown the place, was she? A. Yes. Q. Did anybody, either you or your brothers, or anybody else in your presence, tell her that there were 600 acres of alfalfa land? A. No. Q. Did anybody in your presence tell her that it was all clear level land? A. No. Q. Was there anything said by anybody about the number of acres there were in the place? A. Well, we told her what the deed says, 600 acres



(Testimony of John Scheiber.)

more or less. Q. Was there anything said about it [325] never having been surveyed? A. We never had it surveyed. Q. Was that said to her? A. We never had it surveyed, yes. Q. You never had had it surveyed? A. We never had had it surveyed. Q. You didn't know exactly how many acres there were, did you? A. No, we did not.

Mr. MILLER.—Is it claimed, Mr. Macomber, that this "Plaintiff's Exhibit 5," the circular, was given to Miss Garwood by the defendants, or any one of them personally?

Mr. MACOMBER.—It was given her by Dike at the California Colonization Company, I think.

Mr. MILLER.—In the question you asked, you said the defendants gave it to her, but you meant Dike, I think. I just wanted to have that cleared up.

Mr. MACOMBER.—Who gave it to you, Miss Garwood?

Miss GARWOOD.—Dike gave it to me, at the California Colonization Company's office.

Mr. MILLER.—Q. Mr. Scheiber, I show you a paper, a pamphlet or circular, marked "Plaintiff's Exhibit 5." Did you ever see that before you were in court, in this courtroom? A. No. Q. Did you ever tell Miss Garwood or anybody else, that that land was not subject to overflow? A. No. Q. Did you ever tell her that that land was all subirrigated? A. No. Q. Did anybody else in your presence ever tell her that that land was all subirrigated? A. No. Q. If anybody had misrepresented the facts about

(Testimony of John Scheiber.)

the place in your presence, you would have known it, would you not? A. Yes. Q. You know that everybody told the truth about that, that you heard? A. Yes. Q. And you yourself did the same? A. Yes. [326]

Cross-examination.

Mr. MACOMBER.—Q. Mr. Scheiber, you are Mr. John Scheiber? A. Yes. Q. You remember the occasion when Miss Garwood first came up there with Mr. Dike? A. Yes. Q. Who all were in the party? A. Miss Garwood, Mr. Ramos, Mr. Dyke and the driver. Q. Now, do you remember what day of the month it was? A. I do not. Q. Do you remember what day of the week it was? A. I do not. Q. How many times was Miss Garwood on the ranch before you met her at Dyke's office in Sacramento the first time? A. Twice. Q. She was on the ranch twice before she signed the contract? A. Yes. Q. Are you positive? A. Yes. Q. How many days after her first visit to the ranch was it that she made her second visit to the ranch? A. I could not tell. Q. Can you tell about how many days? A. No, I cannot. Q. Was it two weeks? A. I could not tell. Q. Would you say whether it was a week or two weeks? A. No, I could not say. Q. Did you see her both times? A. Yes. Q. You are positive of that? A. Yes. Q. Did you talk with Miss Garwood the first time she was on the ranch? A. I did. Q. Did you say anything to her about the land being all level? A. No. Q. Did you say anything about the land at all? A. I did not say much about the land.

(Testimony of John Scheiber.)

Q. You did not say much about the land? A. No.

Q. Your brother Morris was not there that first day that she called? A. No.

Q. She did not ask you any questions about the land? A. Yes, she did.

Q. What did she ask you? A. Well, she asked me how much alfalfa we got.

Q. Did she ask you anything else? A. She asked about the lines.

Q. What did she ask you about the lines, and what did you tell her about the lines? A. I pointed out here as good

as I could, along Schwalls, Martin Schwalls, and along Johnnie Schwalls, along young John Schwalls,

and along Mays and [327] along Phil Dreschers, along the old Redfield place over the levee out to the

river. Then I started on Saylor's, along Saylor's, along the County Road, along Claus Peters, over the

levee clear over to the river. That is the way I pointed it out.

Q. But you did not say anything about the character of the condition of the land over on the other side of the levee? A. Well, she could

see that. I told her there was some timber there.

Q. You say she could see that? A. She could see the timber there.

Q. She could see the tops of the trees over the top of the levee from where you were talking? A. Yes.

Q. You were standing there at the ranch house when you were talking? A. At the

house, on a kind of a mound.

Q. You were standing near where George Duff is living at the present time, at the ranch house? A. We were standing there,

and in the corral, near the barn, on that mound.

Q. When did Miss Garwood first say anything to you about the land on the other side of the levee? A.

(Testimony of John Scheiber.)

How is that? Q. When did Miss Garwood first say anything to you about the land on the other side of the levee—when did she first say anything to you about it? A. She never talked to me much about the land outside of the levee. Q. What did she say? A. She said “What is that land out there good for?” I said “It is good for wood.” Q. How long after the sale was that?

Mr. MILLER.—That is assuming it was after the sale. We object to the question on the ground it assumes a fact not in evidence.

Mr. MACOMBER.—Q. You told her at the time you were talking with her at the ranch house that day that the land went over the levee to the river? A. Yes. Q. You did not tell her how far the river was away from the levee? A. I could not tell her how far it was; I didn’t know how far it was. Q. You didn’t say anything about how far it was? A. I said clear over to the river; that is, [328] all I said. Q. You never said anything to her about the land—you never told her that the land was free from overflow? A. No. Q. You did not talk about the land overflowing? A. I don’t know whether I did or not at that time. Q. You never told her about any land underneath the river, of course? A. What? Q. You never told her that there was any land underneath the river? A. No, I did not tell her underneath the river. Q. What are you doing at the present time, Mr. Scheiber? A. Dairying. Q. Where do you dairy? A. On the old Redfield place. Q. What is your brother Morris doing? A. My



(Testimony of Joe Scheiber.)

brother Morris is on the Claus Peters' place. Q. He got that place since you sold the Nicolaus place?

A. Yes. Q. He bought that since? A. Yes. Q.

Now, you never represented that the land contained exactly 600 acres? A. No. Q. You told her that there were 600 acres, more or less? A. Yes.

**Testimony of Joe Scheiber, for Defendants.**

JOE SCHEIBER, called for the defendants, testified as follows:

Mr. HEWITT.—Q. Mr. Scheiber, you are one of the defendants in this action? A. Yes. Q. Where were you born? A. Switzerland. Q. When did you come to this country, how long ago? A. About 26 years ago. Q. Did you go to school in Switzerland? A. I hardly had any schooling. Q. Did you go to school after you came here—have you ever been to school in America? A. No. Q. When did you first meet the plaintiff, Miss Garwood? A. On the Nicolaus Ranch. Q. When, what year? A. 1911. Q. In September of that year? A. Yes. Q. Previous to your meeting her there, had you any communication with any parties, any talk with any parties in Sacramento concerning the sale of the property? What I mean is this: did you [329] talk with Mr. Dyke or anybody else over the 'phone prior to her coming there to the ranch? A. Yes, I did. Q. Were you called up on the 'phone? A. Yes. Q. Who called you up? A. Mr. Dyke. Q. Where were you talking over the 'phone, in your house? A. My brother Johnnie, he was there. Q. Was it in your house? A. In my room inside. Q. What



(Testimony of Joe Scheiber.)

did he want to know? A. He asked me if we got our place for sale and I says "yes, it is for sale, if we get our price then we sell the place, and the personal property has got to be sold too." Q. Did you tell him what the price was? A. Yes. Q. How much? A. \$75,000. Q. Did he ask you then if you found a purchaser whether you would give him a commission for selling it? A. Yes. Q. Did you agree to do it? A. Yes. Q. Your brother John was in the room at the same time? A. At the same time. Q. How long after that was it before you saw Miss Garwood, if you can remember? A. Well, I think they came up the next day; I could not tell you any more than that; I could not tell which day it was. Q. It was shortly afterwards, was it? A. Yes. Q. Who came with her? A. Mr. Dyke, Mr. Ramos, Miss Garwood and the driver. Q. Did she come there to the ranch? A. Yes. She looked over the ranch, looked all over the buildings. Q. Was it you that gave her a buggy ride? A. Yes. Q. Where did you drive her in your buggy or surrey, whatever it was? A. I drove her over the alfalfa land. Q. Was that the first time that she was there or the second time that she was there? A. When I drove her over that was the second time. Q. Now, where did you drive her in your buggy? A. Well, I drove her through the alfalfa land there, and we went down and looked the alfalfa over, and I pointed the line out and she seen the cows there, and we went over to the old barn, to the levee there, looked all around. Q. Did you show [330] her the lines? A. Yes.

(Testimony of Joe Scheiber.)

Q. Were the lines pointed out to her, the correct lines? A. Yes. Q. When you drove her around in the buggy, were you alone with her, that is, when you were driving? A. Yes. Q. Nobody else in the buggy but you and Miss Garwood? A. That is all. Q. Did you meet your brother Morris at that time when you were driving in your buggy? A. Yes. Q. Where did you meet him? A. I met him over there by the old barn; he came in. Q. Did she ask anything there about the boundaries of the place? A. Yes, she did. Q. What was said to her? A. Well, Morris, he told her the boundary line ran there along Claus Peters', over across the levee, clear out to the old Feather River. Q. He represented the Feather River as being one of the boundaries of the place? A. Yes, he did. Q. Did you tell her that there were 600 acres in the ranch? A. No. Q. What was the conversation with reference to that? A. How do you mean? Q. What was your talk about that? A. Well, we looked the land over, and there was a pile of wood there we had piled up, that we had, and we were talking of one thing and another, showing her everything. Q. But about the acreage, you say you did not tell her there was 600 acres? A. No. Q. Did she ask you how many acres there were in the place? A. Yes, she did. Q. What did you tell her or what did Morris tell her in your presence? A. He told her there was 600 acres more or less, what the deed says,—we never had it surveyed, we sell it the way we bought it. Q. You sell it the way you bought it? A. Yes. Q. Now, about the wood, what

(Testimony of Joe Scheiber.)

did you tell her about the wood? A. We had a pile of wood there, and we were talking about the wood, and she said, "What is that land out on the other side of [331] the levee good for?" Morris told her it was good for wood, that is the place where we got the wood. She says "Is there a market so a person can sell wood," and I says, "Yes, people come in from the plains in the fall and buy wood." Q. Could you see the wood lot from the buggy? A. The timber, you mean—the wood lot, what is that? Q. Where the trees grew there over the levee? A. Yes. Q. She had dinner at the place or ranch at one time when she was there, did she? A. She had dinner the first time, and had dinner the second time. Q. Both times? A. Both times. Q. Did she walk around the place any at that time? A. Yes, she did. Q. Where did she walk? A. The first time she walked around the buildings there and looked all the buildings over and barn, and through the corrals—through the yard—she looked everything over. Q. Walked from the house to the barn? A. Yes. Q. How far is it? A. It is about 300 or 400 steps, I think. Q. Was she lame at that time? A. No. Q. Walked right along readily, did she? A. Yes. Q. The second time that she was there, was she lame? A. No. Q. Did she walk around the place any then? A. Yes. Q. Were you present when Mr. Dyke asked her to go up on to the levee and look at the land on the other side of the levee—do you remember his asking her, or don't you? A. Yes. Q. She did not go up on the levee to look at it, did she, or don't

(Testimony of Joe Scheiber.)

you know? Let me ask you again, to see if you understand; did you hear Mr. Dyke ask her to go up on the levee and look at the land over on the other side of the old levee? A. Yes. Q. You heard that? A. Yes. Q. Now, did she go up on the levee? A. No. Q. Now, have you at any time since you purchased that place from the Pacific Mutual Life Insurance Company sold any part of it—did you sell any part of it [332] off before you sold to Miss Garwood other than for roads? A. Just roads. Q. Just the road? A. We had to sell the roads. Q. The roads you sold? A. Yes. Q. Did you sell any other part of the Allgier Ranch? A. No. Q. You sold to her all that you bought? A. We sold all the land we bought to her except the roads. Q. How many times was she up there on the ranch before you went down to sign the agreement? A. The contract you mean? Q. The contract. A. Two times. Q. Did you go to Sacramento? A. Not before. Q. Did you go to Sacramento after the second time that she was up there? A. Yes. Q. Where did you go? A. We went to Mr. White's office. Q. Where did you go first? A. Dyke's. Q. That is the Colonization Company's office? A. Yes. Q. Did you meet the plaintiff there? A. Yes. Q. Did you hear any conversation there with the plaintiff about the acreage in the Garwood place? A. At Dyke's office. Q. Did she talk with you or did she ask any questions about how many acres there were in the place in Dyke's office? A. Yes. Q. Did she ask you or was it somebody else?



(Testimony of Joe Scheiber.)

A. She asked Morris. Q. Were you present? A. Yes. Q. What did Morris tell her? A. He told her 600 acres more or less, what the old deed says; we never had it surveyed and we sell the place the way we bought it. Q. Did you see Dr. Ramos? A. Yes. Q. Did you ever know about his getting any commissions or any part of the commissions that you agreed to give Dyke for selling the place? A. No. Q. You heard of it some time after the deed was made, didn't you? A. I heard it afterwards. Q. Now, in Mr. White's office, was anything said there when you went to draw the contract, about the acreage in the place—about the number of acres in the place? A. Yes. Q. What was said there? A. Morris told her 600 [333] acres more or less, what the old deed says, we never had it surveyed, we sell it the way we bought it. Q. Did you ever tell her that it contained 600 acres of the finest alfalfa land? A. No. Q. Did you ever tell her that it contained 300 acres of the finest alfalfa land in California? A. No. Q. Did anybody else tell her in your presence that the ranch contained 600 acres of the finest alfalfa land? A. No. Q. Did you have any conversation with her or did you tell her anything about some of the land being overflowed? A. Yes. Q. What did you tell her? A. I told her the lower land when the back water come up real high grows under water, all the lower land, lower part of the land, when the river breaks above, then the water comes over the land too, over the alfalfa. Q. Did that come over the land every year? A. No. Q. When was it that you had



(Testimony of Joe Scheiber.)

this conversation, when did you tell her that? A. I told her right at the house, by my house. Q. Was that before the contract was signed? A. Yes, that was the first time when she was up there. Q. When you were with her in the buggy driving about the place did you show her the boundaries, the lines? A. You mean when it was? Q. When you were with her in the buggy when you were driving her about the place did you show her the lines? A. Yes. Q. What was the object of your taking that buggy ride with her? A. I wanted to show her the lines and everything, what a man ought to show her; a man has got to show that. Q. Did you ever tell her anything about that place that was untrue, that was not the truth—did you ever tell her anything about that place that was untrue? A. No. Q. Did anybody else in your presence ever say anything to her about the place that was untrue? A. No. Q. What did you use the back land for? A. For pasture. Q. Was it plowed [334] at the time she was there? A. No. Q. Did you drive her around where she could see the back land in that buggy? A. Yes, she saw the back land from the house. Q. You could see it from the house? A. Yes. Q. Did anybody point out the boundaries of the place from the house to her? A. I did. Q. You did? A. Yes. Q. Were the boundaries pointed out by you at that time the right boundaries? A. They were pointed out both times. Q. Were they the right boundaries? A. Yes. Q. Now, did she say anything to you in any of those conversations about wood? A. Yes, Q. I

(Testimony of Joe Scheiber.)

mean to you, did she say anything to you about wood directly? A. Just what I heard over there, what Morris said. Q. Did you hear her talk with anybody else or anybody talk with her about wood? A. No. Q. You did not hear that? A. No. Q. You did not hear her talk with Morris about wood, or John? A. I heard her talk with Morris. Q. You did hear her talk with Morris? A. Yes. Q. I meant anybody, I mean your brothers as well as strangers? A. I didn't understand the question. Q. What was said about that? A. Well, she says "What is that land good for out there on the other side of the levee," and Morris says, "That is the place where we get the wood." She says, "Is there any sale for wood around here," and Morris says "Yes, you can sell the wood in the fall to farmers—they come in from the plains and buy wood down here." Q. Were you up there in Mr. White's office when the contract was signed? A. Yes. Q. And the contract was read over? A. Yes. Q. Did she say anything to Mr. White to the effect that she was buying 600 acres of the finest alfalfa land in California, or anything of that kind? A. No. [335]

Cross-examination.

Mr. MACOMBER.—Q. About the land where you got the wood you told her there was lots of wood out there, did you, Mr. Scheiber? A. I didn't tell her there was lots of wood out there. Q. What did you tell her? A. I told her there was land outside of the levee. Q. You told her there was lands outside of the levee? A. Yes. Q. You told her—you

(Testimony of Joe Scheiber.)

pointed out the correct lines? A. Yes. Q. You pointed out the correct lines all the way around the ranch? A. Yes. Q. And she saw where the lines went all the way around the ranch? A. She could not see the river. Q. No, but you gave her to understand that there was about 150 acres outside of the levee? A. I did not say how much; I could not say. Q. You could not say? A. No. Q. What was the first time Miss Garwood spoke to you about the ranch being short? A. Oh, that was about 8 or 9 months after we had sold out. Q. Some months after you sold the ranch to her she came around and said the land was short? A. Yes. Q. Now, you say you told her that the back land overflowed? A. Well, the back land, outside of the levee, sometimes the alfalfa gets overflowed when the river breaks out. Q. Did you tell her that the back land overflowed, I mean the back land, the quarter section? A. Yes. Q. How did you come to tell her that? A. Well, I told her; I wanted to tell her the truth. Q. You wanted to tell her the truth? A. I told her that. Q. So you told her that? A. Yes. Q. You didn't want any misrepresentations? A. No. Q. So you just gave her to understand that that back land overflowed? A. Yes. Q. She never knew anything about overflow before that? A. I don't know. Q. She never asked anything about it? A. No. Q. You simply voluntarily told her that yourself? A. Yes. Q. You met her there the first time at your place when she came up with Dyke [336] and Ramos? A. Yes. Q. And you talked with her

(Testimony of Joe Scheiber.)

there, at the ranch house? A. Yes. Q. And you pointed out the lines from the ranch house there? A. Yes. Q. And pointed out the true boundaries? A. The true boundaries—that means the right lines? Q. Yes. A. Yes. Q. Now, you did not tell her that there were any 600 acres exactly? A. No. Q. You told her there were 600 acres more or less? A. 600 acres more or less; the way the old deed says, we never had it surveyed; we sell it the way we bought it. Q. Now, you say the first time she came up you took her around all the ranch? A. No, not the first time. Q. I understood you to say in answer to Mr. Hewitt's question you took her around the first time? A. The second time. Q. Did you say you heard Mr. Dyke ask her to come up on the levee? A. Yes. Q. Where were you? A. At the old barn. Q. Down near the levee? A. Yes. Q. When was that? Was that the first time or second time she came up? A. The second time. Q. That was the second time she came up; you are sure of that? A. Yes. Q. Now, what month was the second time she came up there? A. I could not remember any more; it is pretty near four years since we sold the place, and I can't remember. Q. How long after the first visit was it that she came up, how many days? A. I could not tell you that. Q. Was it two weeks? A. I could not tell you. Q. Just about, how long about? We do not want to get it exact, but about how long.

Mr. MILLER.—If you can't remember you can't remember.

Mr. MACOMBER.—Q. You cannot say whether

(Testimony of Joe Scheiber.)

it was one week or whether it was three weeks or whether it was one day? A. I could not say.

Mr. MILLER.—We object to the question. [337]

Mr. MACOMBER.—We want to get the witness's best recollection; we do not want to pin him down at all. Q. Was it a month, Mr. Scheiber?

Mr. MILLER.—You mean between the first visit and the second visit?

Mr. MACOMBER.—Between the first visit and the second visit. Let me examine the witness. Q. Was it a month Mr. Scheiber, from the time she came up there the first time to the time she came up there the second time? A. It could not be a month.

Q. Was it two weeks? A. Maybe, I don't know.

Q. Maybe two weeks; all right. You say that when Dyke telephoned one night or one day and you and your brother Joe were on the line he asked you if the ranch was still for sale; is that true?

A. Yes. Q. And you told him yes, that the price was \$75,000? A. Yes. Q. You told him he could

go ahead and sell for the commission; is that right?

A. Yes. Q. How long after that did Dyke take the woman up there? A. Well, I could not tell;

it might be a day or two. I could not tell that any more. Q. You couldn't tell how many days; it

was several days, was it? A. I could not tell. Q.

Was it a week? A. No. Q. It was not a week?

A. No. Q. Was it 5 days? A. I could not tell.

Q. You could not tell? A. I could not tell; I could not tell it to anybody. I could not tell because I don't know. Q. We do not want you to tell anything



(Testimony of Joe Scheiber.)

that is not true. Q. Miss Garwood, the first day she came up there, was she lame? A. No. Q. She was not lame at all? A. No. Q. She walked around with you all right, did she? A. She walked around all right. Q. You remember the time when you were at Mr. White's office with Miss Garwood, at the time you signed the contract? A. Yes. Q. You say that Miss Garwood [338] did not interrupt Mr. White when he read the contract?

Mr. MILLER.—We have not testified to that at all.

Mr. MACOMBER.—Q. Mr. White read the contract to Miss Garwood, you remember that? A. Yes. Q. When he said 600 acres, more or less, did Miss Garwood say "Stop right there, Mr. White, I am not buying more or less, I am buying 600 acres of fine alfalfa land." Did she say that? A. No. Q. She did not say that at all? A. No. Q. You are sure? A. I am sure. Q. You are positive? A. I am sure. Q. Did she say anything about more or less at all? Did Miss Garwood say anything about more or less? Did she ask what more or less meant? Did Miss Garwood ask Mr. White what more or less meant? A. I can't remember that. Q. You can't remember? A. No. Q. Did you or Morris at that time tell them that you were selling 600 acres, more or less? A. Yes. Q. You told them you were selling 600 acres more or less? A. Yes. Q. How did you tell her, what were your exact words? A. She asked me how many acres was in the place. Q. Yes. A. And I says 600 acres

(Testimony of Joe Scheiber.)

more or less. We never had it surveyed, that is what the old deed said. Q. Those were your exact words to her? A. That is what I told her. Q. What else was said there at that meeting, do you remember, Mr. Scheiber? Do you remember anything else that was said there at that time? A. No, I can't remember it right now. Q. You can't remember? A. No. Q. How long have you been on the ranch, Mr. Scheiber? A. About 18 or 19 years. Q. That is 19 years before you sold it to Miss Garwood? A. Yes. Q. Now, were you there in Nicolaus, around there at the time the levee broke in '92? A. No, I was not in Nicolaus then. I was around Sacramento. *was around Sacramento.* Q. When did you first go to Nicolaus? When did you [339] first go there, can you remember? A. I can't remember that any more. Q. Can you remember what year it was when you first went on the Nicolaus Ranch? A. No, I can't remember that either. Q. Do you remember when the levee broke in '92? Do you remember when the levee broke and Bill Ewen's pigs were all floating over the fence? A. I remember when the levee broke, but I can't remember what year. Q. Do you know as a matter of fact that before the levee broke there used to be on the Nicolaus Ranch land that went out on the Nelson Bend? A. I didn't know the ranch much then. Q. You don't remember the land much then? A. No. Q. You say you never had the land surveyed before you sold it? A. No. Q. Now, did you ever know about any land that was away

(Testimony of Joe Scheiber.)

over under the river over by the Nelson Bend?

Mr. MILLER.—Do you mean land that was overflowed at high water?

Mr. MACOMBER.—Overflowed land, outside of the old levee? A. How do you mean? Q. Well now, here is what I mean. You know the river used to run around the Nelson Bend? A. Yes. Q. You know the river runs straight now? A. Yes. Q. You understand? A. Yes. Q. Now, the river used to turn around and go up around the bend, around the Nelson Bend; isn't that true? A. I guess so. Q. Now, there used to be a lot of land that ran along the river when it went around the bend; isn't that true? A. There used to be lots of land before, you mean? Q. Yes. A. Well, there was land before, I think. Q. Well now, on this map— A. (Intg.) You don't need to show me a map; I don't know anything about maps. Q. I guess it is immaterial anyway. As a matter of fact do you know—answer this yes or no—do you know whether or not there was a lot of land that went away off by Nelson's Bend? A. There was some land there, I know that. Q. There used to be? A. Used [340] to be, that is what I heard. Q. You heard that? A. Yes. Q. But there was not at the time you sold it? A. Yes, there was some land there. Q. But there was a whole lot that was gone? A. How would that be gone? That is there yet. Q. How is that? A. The place can't be gone; the place would be there yet. Q. Did you ever see it there? A. Yes, I saw it. I was out and I seen it. Q. You saw

(Testimony of Joe Scheiber.)

it down through the water—did you look down through the water to the bottom?

Mr. MILLER.—That is assuming he was looking at it at a high water.

Mr. MACOMBER.—Q. Were you looking at it at high water or low water? A. I don't know any more what the height of the water was; I don't know how it looks. Q. You know there used to be more land to that ranch than there was when you sold it?

Mr. MILLER.—We object to that as assuming a fact not in evidence? A. Yes.

Mr. MACOMBER.—Q. That is true? A. That is true. Q. Do you know whether or not this woman knew about that land being gone when she bought the place? A. I don't know whether she knew that, or not. Q. You did not point out to her across the river where there was any land? A. I pointed the lines. Q. She never went upon the levee? A. Not that I seen. Q. You were out driving with her, were you? A. Yes. Q. You never drove her over the levee, did you? A. No, I did not drive over the levee. Q. Why didn't you drive her over the levee? A. You could not drive over there, too rough, too steep. Q. Wasn't there a road up on the levee there? A. We used to have a road there; we had been hauling wood out, but that was not a road to go on with a lady like Miss Garwood with a buggy; it was not a road good enough to go out with a buggy. Q. You [341] could go over it all right? A. We might have tipped over if we went over there. Q. You did not want any misrepre-

(Testimony of Joe Scheiber.)

sentations on this deal? A. No. Q. You did not want any misrepresentations? A. No. Q. You wanted her to understand just where it was? A. Yes. Q. If that was the case, so that she would not be misled, you told her that the back land down there, in the back overflowed from the water from the tules, didn't you? A. Yes. Q. So that she would understand it perfectly? A. Yes. Q. Why didn't you take her on the levee and tell her that there was some land under the river?

Mr. MILLER.—That is assuming there was some land under the river.

Mr. MACOMBER.—Q. Why didn't you show her how the land was just outside the old levee, Mr. Scheiber? A. She never asked me to go over there. Q. She never asked you, so you didn't take her? A. I never thought of it; she did not ask me to go. Q. You did not tell her how much land there was over the levee? A. No. Q. You didn't say how much? A. No. Q. By the way Mr. Scheiber, did you ever offer to buy any land back from Miss Scheiber?

Mr. HEWITT.—I object to that as immaterial and not proper cross-examination. A. No.

Mr. MACOMBER.—Q. You never asked to buy any back? A. No. Q. Didn't you ever tell her you would give her \$125 an acre for the 100 acre field? A. No. Q. You never offered to buy any part of it back. A. No. Q. In reference to this back and being subirrigated, did you tell her anything about that? A. No. Q. You didn't want her



(Testimony of Joe Scheiber.)

to misunderstand anything, did you?

Mr. HEWITT.—I do not think the witness understands.

Mr. MACOMBER.—Q. You did not want her to misunderstand anything? A. No. Q. Did you tell Miss Garwood anything about the [342] back land at all? A. Yes, I told her that back land, we used it for pasture. Q. Did you tell her the back land was just as good for alfalfa? A. No, I did not tell her that. Q. Did you tell her that it was not as good? A. I told her that it was not as good as the front land. Q. You told her it was not as good? A. Yes. Q. What did you say? A. The front land raises about 5 to 6 crops of alfalfa and the back land about 3 or 4. Q. You told her that, did you? A. Yes. Q. You told her that the back land was not anywhere as near as good as the front land? A. Yes, we told her that. Q. Did she ask you why it was not as good? A. She did not ask me. Q. She never asked you anything about some of the land not being as good as others at all—she never asked you anything about that at all, about some of the land not being as good as the front land? A. I guess she did. We told her the front land was the best; the back land is not as good as the front. Q. How did you happen to tell her that? A. Well, I wanted to tell her everything. I didn't try to cheat her.

Q. Did you ask Miss Garwood if she wanted to buy the other 140 acres at the time Miss Garwood was up there?

Mr. HEWITT.—What other 140?

(Testimony of Joe Scheiber.)

Mr. MACOMBER.—That is the Redfield farm?

Mr. HEWITT.—We object to that as not being cross-examination and as being immaterial, irrelevant and incompetent. A. I did not.

Mr. MACOMBER.—I was just testing the memory of the witness. Q. You did not say anything to her about buying the other 140 acres

Mr. MILLER.—You mean the Redfield farm?

Mr. MACOMBER.—The Redfield farm. A. I can't remember. Q. You can't remember? A. No. [343]

#### Redirect Examination.

Mr. HEWITT.—Q. Mr. Scheiber, did you go on to the land when the boys did, or afterwards—when you bought the land or when you leased it from the Pacific Mutual Life Insurance Company, did you go on to the ranch the same time that your brothers did, and go to work? A. Yes. Q. Now, the break in the levee that Mr. Macomber referred to, was that before you bought it or after you bought it? A. Before. Q. When you bought the land from the Pacific Mutual Life Insurance Company did you consider that land west of the old levee of any particular value except for wood? You knew it could not be farmed, didn't you? A. Yes. Q. Did you consider it of any particular value except for wood? A. That is about all. Q. Its value was just as much when you sold it as when you bought it, was it not? A. Just as much. Q. You never used it for anything except for wood? A. Just for wood. Q. Did you turn stock in it sometimes? A. Sometimes we

(Testimony of Joe Scheiber.)

let the stock go over there; we let the cattle go all around there.

Recross-examination.

Mr. MACOMBER.—Q. When you bought the land there was no value placed on that outside land. You did not consider that of any value, as Mr. Hewitt says? A. How do you mean? Q. Well, like this; that land outside of the old levee you did not use for anything except wood? A. No. Q. It was no good for anything except for wood? A. Just for wood. Q. That is all. When you paid your money for the good land, did you not pay it for this outside land? What I am trying to get at is this, that in fact the outside land was never good for anything? A. It was good for wood. Q. It was not good for anything else. That is what Mr. Hewitt asked you. You could not use it for alfalfa or anything like that? Do you think [344] you could use it for alfalfa? A. We never used it for alfalfa. Q. Could you use it for alfalfa? A. It could be used if you fixed it; it could be fixed so you could use it. Q. But you never put any value on it except for wood? A. Well, we left the cows go there, too. Q. There wouldn't be any cows there when the river was up? A. We had some cows pasture along the river, and we let the cows go there when the water was out. We used it for wood and pasture. [345]

**Testimony of William H. Saylor, for Plaintiff (in Rebuttal).**

WILLIAM H. SAYLOR, called for the plaintiff in rebuttal, sworn.

Mr. MACOMBER.—Q. You are Mr. William H. Saylor? A. Yes.

Q. You testified, I believe, on direct examination in this case before? A. Yes,

Q. I guess you recognize this map, do you not, as being a map of the district in which your place is situated? A. Yes.

Q. Now, do you recognize this place that I indicate, being right south and west of the Garwood ranch, marked W. H. Saylor? A. Yes.

Q. That is your property? A. Yes.

Q. How long have you owned that, Mr. Saylor? What year did you buy it? A. 1909 or 1910.

Q. You bought it either 1909 or 1910? A. Yes.

Q. How many acres have you there, Mr. Saylor?

A. About 125.

Q. In reference to that land, Mr. Saylor, is there any variation in the quality of the land, and if so, on which line, either north or south, or east or west, does the variation run?

Mr. MILLER.—We object to this as immaterial, irrelevant and incompetent, and not rebuttal; if it is proper, it should have been used as a part of plaintiff's original case, and is not proper at this time—it is wholly immaterial and incompetent anyway.

A. It varies.

(Testimony of William H. Saylor.)

Mr. MACOMBER.—Q. In which direction does the variation run?

Mr. MILLER.—The same objection. A. Well, it depends upon what you base the variation; when you base the variation on the point of moisure, it varies from east to west. The further east you go, the dryer the land becomes, the less subirrigation there is.

Mr. MACOMBER.—Is or is not the greater portion of your ranch subirrigated?

Mr. MILLER.—The same objection. [346]

A. The greater portion. I should qualify that by saying in an average season.

Mr. MACOMBER.—Q. What portion have you placed as not subirrigated?

Mr. MILLER.—The same objection.

Mr. MACOMBER.—We will stipulate that your objection may apply to all of this.

Q. What portion of your ranch is not subirrigated?

Mr. MILLER.—The same objection. A. The eastern portion is subirrigated less than the western portion.

Mr. MACOMBER.—Q. Did you have alfalfa in that recently, Mr. Saylor?

Mr. MILLER.—The same objection.

Mr. MACOMBER.—Q. In that eastern corner of which you speak now?

Mr. MILLER.—The same objection. A. Yes.

Mr. MACOMBER.—Q. Did you or did you not remove that growth of alfalfa? A. I took up a por-



(Testimony of William H. Saylor.)

tion of it. Q. For what reason? A. On account of the lack of growth; it didn't grow as satisfactorily as it should have. Q. So you took it out for that reason? A. I did and put other crops in.

Mr. MILLER.—The same objection.

Mr. MACOMBER.—Q. Other than the variation of which you speak, which you say runs from east to west, is there any other variation in the producing quality of your land?

Mr. MILLER.—The same objection. A. There are a few places where sand is deposited on the ranch. That affects the ability to grow crops.

Mr. MACOMBER.—Q. Does the sand that is on your land interfere with the growing of alfalfa any?  
[347]

Mr. MILLER.—The same objection.

A. We are growing alfalfa on the sandy portions.

Mr. MACOMBER.—Q. What is the difference in the growth of the alfalfa which you get on the sandy portion and that which is not sandy?

Mr. MILLER.—The same objection. A. Well, if we get a sand, now, it is not easy to get alfalfa started in sand, but if the sand is a fair one, with a proper distribution of moisture—if we get a stand on that, so that the roots get through the sand into the soil, you get just as good a crop there as you do on the other land.

Mr. MACOMBER.—Q. Ordinarily, what is the condition in that respect?

(Testimony of William H. Saylor.)

Mr. MILLER.—The same objection. A. What is the condition?

Mr. MACOMBER.—Yes, how does your crop average up on the sand, and that which is not sand?

Mr. MILLER.—The same objection.

A. When you get the stand once, it produces as much alfalfa as the other does.

Mr. MACOMBER.—Q. That is, after the roots get started down into the ground?

Mr. MILLER.—The same objection. A. Yes.

Mr. MACOMBER.—Q. Speaking of your alfalfa crop now as it is at the present time, and your alfalfa growing there, how does the yield per season on the sandy land compare with the yield per season on the land which is not sand?

Mr. MILLER.—The same objection. A. The same, it is the same growth, the same yield. I might say that it comes a little earlier, being warmer land in the spring.

Q. (Mr. MACOMBER.) In respect to the value of the land, in so [348] far as it is affected by sand for the growing of alfalfa, is the sandy portion of any different value than the other portion?

Mr. MILLER.—The same objection.

A. Yes, it is not as valuable as if the sand was not there.

Mr. MACOMBER.—Q. Is there very much of your land that has sand on it? A. No.

Mr. MILLER.—The same objection.

Mr. MACOMBER.—Q. How many acres?

Mr. MILLER.—The same objection.

(Testimony of William H. Saylor.)

A. Probably as much as five acres; it might run up to seven.

Mr. MACOMBER.—Q. It might run from 5 to 7 acres, which has sand on it?

Mr. MILLER.—The same objection. A. Yes.

Mr. MACOMBER.—Q. The sand on those five or seven acres varies, does it, in depth?

Mr. MILLER.—The same objection. A. Yes.

Mr. MACOMBER.—Q. How much does it vary; how does it run?

Mr. MILLER.—The same objection.

A. It varies from only a trace up to probably 18 inches in depth.

Mr. MACOMBER.—Q. With the alfalfa started through it, the yield is just as much?

Mr. MILLER.—The same objection.

A. There is a little portion that I have not tried to put alfalfa on the sand; we use the sand for hauling into the corrals.

Mr. MACOMBER.—Q. But in respect to that which you have used?

Mr. MILLER.—The same objection. A. Yes.

Mr. MACOMBER.—Q. The yield is just as good?

Mr. MILLER.—Same objection. A. Yes.

Mr. MACOMBER.—Q. Is there any variation in the quality of your land in respect to north and south? [349]

Mr. MILLER.—The same objection. A. No.

Mr. MACOMBER.—Q. The quality of your land running north and south is of a uniform producing quality?

(Testimony of William H. Saylor.)

Mr. MILLER.—The same objection.

A. So far as I have been able to observe it.

Mr. MACOMBER.—Q. You have now had it how many years?

Mr. MILLER.—The same objection.

A. Since either 1909 or 1910; I am not positive as to the year exactly.

Mr. MACOMBER.—Q. Mr. Saylor, at the time you bought this land, what did you pay for it?

Mr. MILLER.—Same objection.

A. \$100 an acre.

Mr. MACOMBER.—Q. You paid \$100 an acre?

Mr. MILLER.—The same objection. A. Yes.

Mr. MACOMBER.—Q. On the basis of how many acres?

Mr. MILLER.—The same objection.

A. 127.8 acres at that time.

Mr. MACOMBER.—Q. 127.8 acres? A. Yes.

Q. How long had that place been on the market before you bought it, Mr. Saylor?

Mr. MILLER.—The same objection.

A. I don't know positively; I was told that the parties had offered it for sale for about a year.

Mr. MACOMBER.—Q. It had been up for sale about a year?

Mr. MILLER.—The same objection. A. Yes.

Mr. HEWITT.—We ask that the answer be stricken out on the ground it is hearsay.

Mr. MACOMBER.—Q. Do you know about that of your own knowledge, Mr. Saylor?

Mr. MILLER.—The same objection. A. No.

(Testimony of William H. Saylor.)

Mr. MACOMBER.—Q. How long a time before you bought the land [350] had you been aware of the fact that it was up for sale?

Mr. MILLER.—The same objection.

A. I was told about it about a month before I bought it.

Mr. MACOMBER.—Q. You were advised that you could get it at that price about a month before you purchased it?

Mr. MILLER.—The same objection. A. Yes.

Mr. MILLER.—We move to strike out all of the testimony on the grounds stated in our various objections. No questions, Mr. Saylor.

**Testimony of H. W. Furlong, for Plaintiff (In Rebuttal).**

H. W. FURLONG, called for the plaintiff in rebuttal, sworn.

Mr. MACOMBER.—Q. Mr. Furlong, you have heretofore testified that you examined the land on this Garwood place? A. I did. Q. You examined the land from one end of the place to the other? A. I did. Q. You classified the soils and you know the value of that land at that particular place?

Mr. MILLER.—We object to this as immaterial, irrelevant and incompetent, not rebuttal, a part of their original case when the witness was on the stand before, and they were given every opportunity to go into every matter that he might have any familiarity or acquaintance with; that if they neglected to avail themselves of that opportunity, it is too



(Testimony of W. H. Furlong.)

late now to do so. We were entitled to have the benefit of this witness' testimony before the court at the time when the judge was here, and we object to the witness being interrogated as to any matter about which he was asked or concerning which he testified when he was on the stand during the plaintiff's case, or about any other matter that is not strictly rebuttal. A. I do. I know the value of that [351] land agriculturally.

Mr. MACOMBER.—Q. Will you state, Mr. Furlong, what in your opinion was the value of the land on the Garwood place, that particular portion of the Garwood place, being the 250 acres next adjoining the old levee to the southeast in the year 1911?

Mr. MILLER.—The same objection, and on the further grounds also that it is immaterial, irrelevant and incompetent, the witness not shown to be competent to testify, no the proper method of fixing the value of lands, or not the proper measure of damages, or of compensation in this case.

A. I should say that the land itself had a value from \$100 to \$115 per acre; with the improvements, its value is perhaps \$125 an acre, not over that.

Mr. MACOMBER.—Q. You refer now to the best lands on the ranch?

Mr. MILLER.—The same objection. A. I refer to the piece of land which you asked me concerning, the 250 acres of land lying close to the Feather River; that is the best land on the ranch.

Mr. MACOMBER.—Q. I will now ask you, Mr. Furlong, in respect to land in the vicinity of Sacra-

(Testimony of W. H. Furlong.)

mento, if a person owns land in the vicinity of Sacramento, four miles south of Sacramento, first-class subirrigated river bottom land, what is it worth?

Mr. MILLER.—The same objection. A. I should have to know the parcel of land, and whether that value was entirely for the carrying on of agricultural crops, or double value if the land was within four miles of the city of Sacramento—there is a speculative as well as an agricultural value.

Mr. MACOMBER.—Q. Assuming for the moment that this land which you have now stated on the Garwood place to be worth at the time [352] plaintiff purchased it between 100 and 125 an acre, I say, assuming that the land were situated about 4 miles south of Sacramento, what would you say would be its value?

Mr. MILLER.—The same objection, not a proper hypothetical question, and assuming something that is not in evidence and cannot be a fact in this case.

A. I would say that its value would range, under the circumstances you suggest, properly or equally reclaimed with that land in district 1001, it would be worth from \$250 to \$300 an acre; not all by virtue of its agricultural possibilities, but by reason of its proximity to a city of 75,000 inhabitants; the speculative value that goes with any piece of land, whether it be good agricultural land, or just land in the vicinity of a large town.

Mr. MACOMBER.—That is all.

(Testimony of D. R. Redfield.)

Mr. MILLER.—I move to strike out the testimony of the witness on the grounds stated in our objections.

**Testimony of D. R. Redfield, for Plaintiff (in Rebuttal).**

D. R. REDFIELD, called for the plaintiff in rebuttal, sworn.

Mr. MACOMBER.—Q. What is your full name, Mr. Redfield? A. D. R. Redfield, Q. Where do you reside? A. Nicolaus. Q. What is your business? A. Farming. Q. How long have you resided in the vicinity of Nicolaus? A. Ever since '52, the 27th of April. Q. Ever since '52? A. Yes. Q. Have you ever seen the owner of a certain tract of land in that vicinity which is now known as the Redfield farm, or for a great many years was known as the Redfield farm? A. Yes, I owned a two-thirds share. Q. When did you own the Redfield farm—you do not have to be exact to the day. A. I think my father died in 1908, if I am not mistaken—no, 1898, somewhere along there. Q. When did you sell the Redfield farm? [353]

Mr. MILLER.—That is objected to as immaterial, irrelevant and incompetent, not rebuttal, if any evidence at all a part of the plaintiff's case in chief, but on a collateral matter not in any way involved in this case and cannot become involved in this case. If any questions were asked by counsel about the Redfield farm, he is bound by the answers; they are wholly collateral to the matter at issue.

Mr. MACOMBER.—Q. In reference to the state-

(Testimony of D. R. Redfield.)

ment of counsel, I will state that one or two of defendant's witnesses gave his testimony in reference to what the Redfield farm was sold for.

Mr. MILLER.—You are bound by it; you asked them the question. You cannot go into collateral matters outside of this record and ask them about other places and try to dispute them after they have given their answers.

Mr. MACOMBER.—Very well, we will have a ruling on it at the time the testimony is read. Read the question.

(Last question read by the reporter.)

A. About ten years ago. Q. Where is the Redfield farm situated with reference to the Nicolaus Algier place, what was formerly known as the Nicolaus Algier place, which is now the Garwood place? A. Well, about northeast. Q. Is it or is it not directly adjoining? A. It is adjoining. Q. What is the character of the soil and general agricultural value of the land—how is it situated with reference to the Garwood place?

Mr. MILLER.—The same objection.

A. Just about the same.

Mr. MACOMBER.—Q. Is it the same or is it not the same general character of land? A. About the same. Q. Does it extend back from the river as far as the Garwood place; in other words, what I mean is this, is it as long, is the tract as long away from the old levee as the Nicolaus place is? A. It is pretty near—I think that it is—it is about the same. Q. Now, when you say it is about the [354] same,

(Testimony of D. R. Redfield.)

you do not include the quarter section—do you or do you not include the quarter section on the Garwood place?

Mr. MILLER.—We object to the question on the same grounds.

Mr. MACOMBER.—In order to refresh your memory, we will show you a map which is in evidence in this case. This point here which I am now directing your attention to is the Redfield farm, and this is the Garwood farm. A. Well, it don't extend back as far as the Garwood place, but it joins on. Q. Mr. Redfield, are you familiar with land values, the values of land in that vicinity, as those values have existed in the last few years, the last ten years? A. Yes. Q. Speaking now in reference to the land of the Redfield farm, and also the land of the Garwood farm as far as the Garwood farm goes out, that is to the end of the Redfield farm, how does those two pieces compare in respect to value?

Mr. MILLER.—We object on the same grounds heretofore stated, immaterial, irrelevant and incompetent.

Mr. MACOMBER.—Q. What is their general comparison?

Mr. MILLER.—It is also objected to as not rebuttal, part of their original case, a collateral matter by which they are bound, if they brought it in, in reference to the two places; we did not; also on the further ground he is not competent to testify to the matter.

Mr. MACOMBER.—Q. What is the general com-



(Testimony of D. R. Redfield.)

parison? A. About the same. Q. Now, you are familiar with the sales of real estate that have taken place there in the last ten or fifteen years? A. Of which place? Q. That is, of the sales of real estate that have taken place around that neighborhood in the last ten or fifteen years? A. Yes. Q. Do you know what the producing power, about what the producing power is of that land, that is, the Garwood place, [355] with respect to alfalfa? A. Yes. I know what I have produced, and I suppose they have got about the same kind. Q. When you sold your place, Mr. Redfield, what was the price per acre which you received? I am speaking now in reference to the 128 acres of which that land is composed, lying east of the levee.

Mr. MILLER.—Objected to as immaterial, irrelevant and incompetent, and not shown that the land was segregated in any manner, shape or form at the time of the sale, and on all the grounds stated in our previous objections, a collateral matter wholly, and not in any way involved here. A. I sold 140 acres for \$5000 to Schwartz.

Mr. MILLER.—I move to strike out the answer on the same grounds stated in our objections.

Mr. MACOMBER.—Q. How many acres of that land was inside of the levee; by that, I mean to the east of the levee—and usable for agricultural purposes.

Mr. MILLER.—The same objection. A. Well, that is a pretty hard question to answer.

Mr. MACOMBER.—Q. How many acres were

(Testimony of D. R. Redfield.)

there? A. We always called it 35 acres in the bottom, in the whole place, that would leave 125 acres; when I sold to Schwartz, I sold him 140 acres from the river to the back end. Q. Out of that land that you sold, how many acres were outside of the levee?

Mr. MILLER.—The same objection. A. I will tell you according to what I kept, 8 acres over the levee and 12 acres inside—now, you see I do not happen to know exactly how many acres there were in the bottom that I sold to Mr. Schwartz. Q. According to your best estimate at this time, how many were there in the Redfield farm a that time east of the old levee?

Mr. MILLER.—Same objection. All of this testimony, even if [356] admissible at all, would be too remote. A. About 22 acres, to the best of my knowledge.

Mr. MACOMBER.—Q. Pardon me, Mr. Redfield; when you say 22 acres, you mean— A. (Intg.) Over the levee. Q. Over the levee? A. That would leave about 122, I think. Q. You say there were how many altogether? A. There were 160 acres in the whole place, from the river to Mr. Drescher's place, the back end of the field; now, I kept out 20 acres, that left 140 acres that I sold to Mr. Schwartz. Now how many acres laid over the levee, I could not tell. Q. And about how much is that per acre?

Mr. MILLER.—Objected to as being a mere matter of calculation, and also on the same grounds that we have stated heretofore.

(Testimony of D. R. Redfield.)

Mr. MACOMBER.—Very well; I will withdraw the question. Q. Now, Mr. Redfield, what, in your opinion, was the value of that portion of the Garwood place, that is, per acre, which could be used for alfalfa at the time this plaintiff bought it.

Mr. MILLER.—We object to that as immaterial, irrelevant and incompetent, not rebuttal, a part of the original case of plaintiff, if she intended to make the proof at all, and the witness is not competent to testify as to the value of lands, and not the proper method of ascertaining or determining the issues in this case or the value of property. A. I always considered 100 acres as worth \$125 an acre, and 150 acres at \$100 an acre.

Mr. MILLER.—We move to strike out the answer on the grounds stated in the objection, and also on the ground it is not responsive.

Mr. MACOMBER.—Q. Now, then, Mr. Redfield, how many acres of land do you figure there would be on that ranch which would be what you would call alfalfa land. [357]

Mr. MILLER.—The same objection, A. Well, I figure 100 acres in the 100-acre field of the very best, and I figure 150 acres at \$100 an acre, laying between the house and the 100-acre field.

Mr. MACOMBER.—Q. In respect to the remaining land on the ranch, about 200 acres, what is your estimate of the value of that land per acre?

Mr. MILLER.—The same objection and an improper method of ascertaining the value of the land, and it is not rebuttal, it is part of the original case;

(Testimony of D. R. Redfield.)

the witness is not competent to answer the question, and it is in every way immaterial, irrelevant and incompetent.

Mr. MACOMBER.—Q. I will add to that at this time: I am speaking now entirely with reference to the land lying in the southeasterlymost part of the ranch, that is, the 200 acres farthest from the levee.

Mr. MILLER.—The same objection. A. \$60 an acre.

Mr. MACOMBER.—Q. Now, directing your attention, Mr. Redfield, to that portion of the ranch lying to the north and west of the old levee, that is, the outside land, the swamp land, what value would you place upon that at the same time, that is, when she bought the land?

Mr. MILLER.—The same objection. A. I call it worthless.

Mr. MACOMBER.—Q. Is that land usable for any agricultural purpose?

Mr. MILLER.—The same objection. A. No.

Mr. MACOMBER.—Q. Why not?

Mr. MILLER.—The same objection. A. It is nothing but sand.

Mr. MACOMBER.—Q. How is it in respect to overflow? [358]

Mr. MILLER.—The same objection.

Mr. MACOMBER.—Q. That is, how was it before the new levee was built there?

Mr. MILLER.—The same objection.

A. Covered with water when the river was up.

(Testimony of D. R. Redfield.)

Mr. MACOMBER.—Q. Now, Mr. Redfield, I will direct your attention to certain lands as shown on this map marked Defendant's Exhibit "J," do you know of a piece of land which was purchased a few years ago by some Japs, or a Jap, next adjoining the Garwood place? Do you remember that? A. Yes. Q. Do you know that land? A. Well, it is about the same as what lay in between, around Miss Garwood and the Saylor place.

Mr. MILLER.—We move to strike out the answer as not responsive.

Mr. MACOMBER.—Q. How does that land compare with the Garwood land lying directly adjoining on the west?

Mr. MILLER.—Objected to on the same grounds as heretofore stated in our objections.

A. About the same.

Mr. MACOMBER.—Q. Is there any difference in quality, so far as producing power is concerned?

Mr. MILLER.—The same objection.

A. No.

Mr. MACOMBER.—That is all.

Mr. MILLER.—We move to strike out the testimony of the witness on the grounds stated in the objections, among the grounds being that the testimony adduced from this witness is and was a part of the plaintiff's case in chief, and is not in any manner rebuttal; on the ground that it is immaterial, irrelevant and incompetent, insufficient for the purpose of establishing or showing any damage, and is not the proper measure of damages in this case, not the



(Testimony of D. R. Redfield.)

proper method of determining value of property, and is in every way immaterial, irrelevant and incompetent. [359]

Q. Mr. Redfield, how long did Mr. Schwartz keep that place after you sold it to him? A. Well, I don't know exactly; he did not keep it very long; I don't know whether it was a year.

Q. Was it not a little less than a year?

A. I think maybe it was; I don't think hardly though it was a year; it was not long.

Mr. HEWITT.—Q. He resold the place, did he? A. Yes. Q. Do you know what he received for it? A. Well, no, I do not. Q. Was it not a matter of common repute there, what he got for it? A. Yes, but he sold everything with the place. Q. Do you know what he got for everything? A. I don't remember. Q. Did it not exceed some \$12,000 or \$14,000? A. I could not swear to it. Q. You still retain 12 acres of the protected land, do you? A. Yes. Q. You are still the owner of it? A. Yes. Q. There are 22 acres altogether? A. No, sir. Q. How many acres are there? A. I kept 12 acres on one side and 8 on the other. Q. Both sides? A. I have got  $6\frac{2}{3}$  acres over the levee. Q. I mean all together, how many acres? A.  $18\frac{2}{3}$ . Q.  $18\frac{2}{3}$  acres? A. Yes. Q. The land value now there is about the same as it was in 1911, is it? A. About the same, yes. Q. Mr. Redfield, will you take \$350 an acre case in hand for your place today? A. My place is not for sale till I die. Q. You would not take it, would you? A. The place is not for sale. Q.

Testimony of D. R. Redfield.)

Would you take \$350 an acre for all of your land?

A. The place is not for sale. Q. That is the only answer you will make? A. Yes. Q. I will give you

\$350 an acre for that place of yours today in cash.

You would not take it? A. I have told you it was

not for sale. Q. Now, Mr. Redfield, what have you

devoted your place to raising? A. Alfalfa. Q.

Have you raised corn? A. Yes. [360]

Q. Have you raised potatoes? A. Yes. Q. What

is the highest yield per acre that you obtained from

that place of yours in the past for raising potatoes?

A. Well, I have never measured the acreage.

Mr. MACOMBER.—We object on the ground that potatoes are not alfalfa.

Mr. MILLER.—Your testimony has been confined to the producing of alfalfa on that ground?

Mr. MACOMBER.—Yes.

Mr. HEWITT.—Q. What is your answer? A. I say that I never measured the ground off when I

raised potatoes. Q. Haven't you raised as high as

100 sacks of potatoes to the acre there? A. No, and

nobody in the state ever did. Q. Have you ever told

anybody that you raised that number of sacks? A.

No. Q. Have you ever raised 400 sacks to the acre?

A. I never told anybody. Q. Have you raised 400

sacks to the acre there? A. To the acre? Q. Yes.

A. How can a person tell what a person raises when

he never measures the ground. Q. Have you ever

estimated that you raised 400 sacks to the acre? A.

I don't think I ever did. Q. You never told any-

body that you had? A. I don't think so.

(Testimony of D. R. Redfield.)

Mr. MACOMBER.—The same objection, immaterial, irrelevant and incompetent.

Mr. HEWITT.—Q. What is your recollection concerning what you have said the land will produce in potatoes? A. Well, I consider 300 sacks of potatoes to the acre a big crop. Q. You have raised more than that, have you not? A. I don't think I ever did.

Q. Do you remember a conversation that you had with me in Lincoln one day concerning a potato crop on your place? A. No. [361]

Q. You don't recall it? A. No. Q. You say the land west of the old levee was nothing but sand, I believe? A. Yes. Q. Is it not grown up to timber? A. Some. Q. Aren't there some large trees there? A. I believe so. Q. Very many? A. I don't know, not so very many. Q. Isn't it just about the same as the timber land along the line of the levee from Nicolaus south and Nicolaus north? A. Well, there is timber on it. Q. Do you know the Drescher land, that adjoins your land? A. Yes. Q. Do you know the piece that was owned by Carl Drescher? A. Yes. Q. Do you know what he obtained per acre for that land? A. Yes. Q. How much was it? A. \$200. Q. Was it exactly, \$200, or was it \$240? A. No. Q. I did not get your answer. A. The way I got it from Kreig, he paid \$200 an acre. Q. There is a slough that runs through that land, is there not? A. Carl Drescher's? Q. A sort of slough that runs through there? A. Yes. Q. Do you know the John Borgman place? A. Yes, I know it; I have been

(Testimony of D. R. Redfield.)

there several times. Q. Do you know what he paid for it? A. No. Q. You never heard what he paid for it? A. No. Q. Do you know what its market value is to-day? A. No. Q. Do you know the May place? A. Yes. Q. Do you know what the market value of that place is to-day? A. No. Q. Did you know in 1911 what the market value was? A. I know what he paid for it. In 1911? A. At the time that he bought it from Storm, I know what he paid for it. Q. Do you know the market value in 1911? A. Of the Saylor place? Q. The May place. A. The May place, no, I do not. Q. When you refer to the value of a ranch, Mr. Redfield, what do you mean by it? What is your understanding? When you speak of the value of a ranch, what do you understand by that term? A. Well, what it brought at that time.

#### Redirect Examination.

Mr. MACOMBER.—Mr. Redfield, as long as Mr. Hewitt spoke of your place, your place is a little different, isn't it, from the majority [362] of these places along there?

Mr. MILLER.—Objected to as immaterial, irrelevant and incompetent; he has already testified it was practically the same ground.

Mr. MACOMBER.—I mean in respect to improvements. Isn't it a fact, Mr. Redfield, that you take a great deal of pride in your little place? A. I do. Q. Isn't it true that you are very attached to your little place? A. Yes. Q. You have taken great pleasure in fixing it up according to your ideas?

(Testimony of D. R. Redfield.)

Mr. MILLER.—Objected to as immaterial, irrelevant and incompetent.

Mr. MACOMBER.—Q. How is your place fixed up in comparison with the other places along there, Mr. Redfield?

Mr. MILLER.—The same objection. A. I don't know. They are all fixed up pretty good.

Mr. MACOMBER.—Q. As a matter of fact, isn't that place kept up, right up to the minute, in respect to appearance and looks?

Mr. HEWITT.—That is objected to as leading.

Mr. MACOMBER.—I know it is leading. I will withdraw the question.

Q. In respect to the Borgman estate, have you ever been on the Borgman estate in recent years? A. Yes, I have been there several times. Q. This man Borgman, what kind of a man is he, so far as getting stuff out of the soil is concerned? A. Well, he gets it out if anybody can. Q. He gets it out if anybody can? A. Yes.

Q. As a matter of fact, he is far and away ahead of any of the rest of the fellows around there, is he?

Mr. MILLER.—That is objected to as immaterial, irrelevant and incompetent, and calling for a conclusion. A. Yes.

Mr. MACOMBER.—Q. How has he got that place improved in reference [363] to irrigation? A. Well, he has got it cemented from one end to the other. Q. What do you mean by cemented? A. He has got his cement pipes running through his land; you can cement a piece to-day and shut that off and



(Testimony of D. R. Redfield.)

go right along until you have got the whole place irrigated. Q. Mr. Redfield, I am going to ask you this question: You have been in that neighborhood for a great many years; you have seen property changing hands. Now, when we speak of the size of a piece of property—if you look on that map and you think of the pieces of property around that neighborhood and compare the sizes of them, how does the Garwood ranch compare in size with all the places around it, that is, to the various places around it?

Mr. MILLER.—I object to that as immaterial, irrelevant and incompetent, and not redirect examination.

A. It is larger.

Mr. MACOMBER.—Q. Mr. Redfield, in reference to that Adam Kreig place, how many acres are there to that ranch? A. I think there are 56 acres. Q. Is there any land which is not subirrigated on that?

Mr. MILLER.—Objected to on the same grounds.

Mr. MACOMBER.—I will withdraw the question. Q. When land is sold in that neighborhood in small pieces, how does the price compare with the sale where the piece is very large?

Mr. HEWITT.—Objected to as immaterial, irrelevant and incompetent, and as calling for the conclusion of the witness on a matter about which he is not known to be familiar, and as not a proper method of ascertaining or determining values in this case, and not rebuttal, and calling for the opinion and conclusion of the witness.

A. Well, it brought more money.

(Testimony of D. R. Redfield.)

Mr. MACOMBER.—Q. A small piece brings more per acre? [364]

Mr. MILLER.—The same objection. A. Yes.

Recross-examination.

Mr. MILLER.—Q. When you fixed a value on the 100-acre field, you fixed a value on it wholly for alfalfa purposes, did you? A. Yes.

Q. And the second piece here, for the same purpose? A. Yes.

Q. And the third piece for the same purpose?

A. Well, I do not call the third piece alfalfa land.

**Testimony of D. J. Mulvany, for Plaintiff (in Rebuttal).**

D. J. MULVANY, recalled for plaintiff in rebuttal, sworn.

Mr. MACOMBER.—Q. Mr. Mulvany, I believe on your former examination you testified as to the value of the land on the Nicolaus place, that is, at the time it was purchased by Miss Garwood, but your testimony was confined to the land in the southeasterly most corner and to the land lying outside of the levee; there are 250 acres of land, that is lying easterly from the old levee, which you did not appraise. I would like to ask you now, Mr. Mulvany, what do you figure the land to be worth on the Garwood place—I am speaking now of what it was worth in 1911—that portion which is what you would call alfalfa land?

Mr. MILLER.—We object and protest against this witness being recalled; he was here on the stand and testified fully on three or four occasions, I think, was

(Testimony of D. J. Mulvany.)

recalled time and again. This testimony if admissible at all would be part of the plaintiff's original case, and there is no reason or excuse for his not having given it at that time; that it is immaterial, irrelevant and incompetent and not in any way admissible as rebuttal or otherwise. [365]

Mr. MACOMBER.—I will state here that inasmuch as the Court entitled the defendants to put in testimony as to the value of lands concerning which the plaintiff in her complaint has never complained, the plaintiff is therefore entitled to rebut that testimony by evidence as to the value of the land which you were permitted to value. A. 100 acres on the west side of the ranch, east side of the Vernon and Nicolaus Road, at \$125 an acre, and 150 acres or so east of that portion, toward the center of the ranch, \$100 an acre. Q. If I understand your statement, the very best land on that ranch at the time the plaintiff bought it was not worth more than \$125 an acre.

Mr. MILLER.—Objected to as leading, immaterial, irrelevant and incompetent, and an assumption by counsel not justified by the evidence, and we also object to it on the other grounds stated in our previous objection.

Mr. MACOMBER.—I am merely repeating the witness' answer.

Mr. MILLER.—If he testified to it, there is no necessity of repeating that.

Mr. MACOMBER.—I think you are correct. Q. Mr. Mulvany, are you familiar with the land lying

(Testimony of D. J. Mulvany.)

directly east of the 160 acres, the lower portion of the Garwood Ranch?

Mr. MILLER.—The same objection.

Mr. MACOMBER.—By that piece I refer to the land which was bought a few years ago by the Japs.

Mr. MILLER.—The same objection and the further objection that it is a collateral matter, not in any way involved, and something you are not entitled to go into.

Mr. MACOMBER.—Q. How does that land compare, Mr. Mulvany, with the Garwood land? [366]

Mr. MILLER.—The same objection. A. With what portion of the Garwood land? Q. That is that portion which lies directly west of the Mays place and the Schwall place?

Mr. MILLER.—The same objection. A. The 60 acres?

Mr. MACOMBER.—Q. Yes. A. It is about the same character of land only it is higher, higher in elevation. Q. In respect to value, how would it compare in 1911?

Mr. MILLER.—The same objection. A. Well, it was worth more than that piece.

Mr. MACOMBER.—Q. Worth more? A. More than the Garwood piece. Q. Worth more than the Garwood piece? A. Yes. Q. Now, Mr. Mulvany, how does the Redfield farm compare in value agriculturally with the Garwood farm?

Mr. MILLER.—The same objection.

Mr. MACOMBER.—Q. How did it compare in 1911?

(Testimony of D. J. Mulvany.)

Mr. MILLER.—The same objection. A. I don't know as I understand the question. Do you mean what is known as the Redfield Ranch or what he owns now?

Mr. MACOMBER.—Q. What is known as the Redfield farm.

Mr. MILLER.—The same objection. A. It is similar to the Garwood farm right adjoining; the front is the best and the poorest in the rear.

Mr. MACOMBER.—Q. How would you say that the Saylor place compared with the Garwood place?

Mr. MILLER.—The same objection and not in any manner rebuttal? A. As a whole it is a much better ranch than the Garwood ranch. There is a much larger proportion of it alfalfa land or for any other purpose.

Mr. MACOMBER.—Q. Now, Mr. Mulvany, I wish to call to your mind [367] the improvements existing upon the Garwood place in 1911, at the time the plaintiff bought it, and the improvements which were on the Saylor place at the time Mr. Saylor bought it. How did they compare, if you can answer the question?

Mr. MILLER.—The same objection. A. Well, the buildings on the Saylor ranch that is, the barn was newer, the house was a small one; the farm dwellings are a little better; I think they were built a little later, but not so large, not so many of them.

Mr. MACOMBER.—Q. With respect to the fences that were on the Saylor place?

Mr. MILLER.—The same objection. A. The



(Testimony of D. J. Mulvany.)

fences up there are all alike, very little difference.

Mr. MACOMBER.—Q. Now, Mr. Mulvany, can you state as to the condition of the market in that vicinity for land from the year, say 1900 up to 1911—10 or 12 years in there before the reclamation—during that period of time, the 10 or 12 years which elapsed immediately previous to the time reclamation was commenced, how the market stood in reference to the land along there?

Mr. MILLER.—The same objection.      A. Very few sales, very little change in value.

Cross-examination.

Mr. HEWITT.—Q. Mr. Mulvany, is it not a fact that from 1900 to 1911 land in Sutter County generally in market value, doubled in value?    A. Not in that section.    Q. In Sutter County, generally?    A. Up about Yuba City, there have been increases there but not in this section.    Q. But you are acquainted with the land in Sutter County about Live Oaks?    A. Not the extreme end of the county.

Q. Did you ever teach school in that country?    A. No.    [368]

Q. Did you teach school at Pennington?    A. You taught school there.    Q. Did you teach school in Pennington?    A. I taught school in '77; that is a long time ago.    Q. At Pennington?    A. Yes.    Q. That is near Live Oaks?    A. It is 6 or 7 miles.    Q. Do you know where the Bird Ranch was at Live Oaks?    A. I passed by it, yes.    Q. What was it used for up to 1906 or 1907?    A. I passed by that place very little since I taught school.    At that time it was used

(Testimony of D. J. Mulvany.)

as a wheat ranch. Q. You don't know whether up to 1907 that had been used for anything else. A. 1907? Q. Yes, 1906 or 1907. A. I think it was mainly a wheat ranch about that time. Q. It was a tract something like 2500 acres, was it not? A. I don't know the size of it; I know it was a large tract. Q. Do you know what it sold for? A. No. Q. Did you ever hear what it sold for? A. No. I understood it was divided up into small tracts. Q. I am speaking of it as a whole? A. No, I never heard. Q. It was subdivided into small tracts? A. Yes. Q. Have you passed through that section of the country in the last 3 or 4 years? A. Yes, about a year ago I passed by on the train. Q. The land there improved is selling for what prices, do you know? A. That land in late years has been placed under sub-irrigation, and a section of that is selling at a better price than it did some years ago. Q. You don't know that Mr. Bird received \$135 an acre for that place, do you—I mean the first sale of the whole tract of 2500 acres? A. I understood he sold only part of it; he still owns part of it. Q. The Bird ranch at Live Oaks, the old place, is still owned by the Bird family, that is out near Yuba City. You never heard he received \$135 an acre? A. No. Q. It was not under irrigation until after it was subdivided, was it? A. I could not say. I do not live in that section of the county. [369]

Q. You are not acquainted there? A. Very little; I have some acquaintances up there. Q. You don't know about what the market value of land was in that

(Testimony of D. J. Mulvany.)

section? A. In the north end of the county? Q. Yes. A. No.

Mr. MACOMBER.—Where is this district that you are speaking about, how far from this land?

Mr. HEWITT.—About 30 miles, I should judge.

The WITNESS.—About 30 miles.

Mr. MACOMBER.—That is further than Sacramento, I think that is irrelevant.

Mr. HEWITT.—I want to see what his ideas are about the market values of lands. Q. The land up there in that section would not produce alfalfa without irrigation, would it? A. I don't know; when I was in that section there was very little alfalfa raised in the county at that time, that I taught at Pennington—there was very little, scarcely any alfalfa raised in that county 40 years ago. Q. Was alfalfa raised along the rivers? A. Some, but not much. Q. Take the land right east of Nicolaus, from 1900 to 1911, did it not more than double in value? A. No. Q. Do you know what the Morehead piece sold for? A. I don't know what it was sold for; that must have been sold within the last year or so. Q. It has been sold for several years? A. Which Morehead place? Q. The Frank Morehead place. A. No, I didn't know that he had sold it. Q. I believe you told me on the examination the other day, that Baldwin had paid something like \$65? A. I understood about fifty. Q. Have you found anything to the contrary since you were a witness? A. No. Q. Was that its market value at that time? A. Well, I suppose it was. That was

(Testimony of D. J. Mulvany.)

the price he paid for it. Q. You suppose so? A. Yes. Q. You don't know that he paid \$131, do you, an acre, [370] for it—\$131.50? A. No, I do not. Q. Something like that? A. No. Q. You don't know that he did not? A. No. Q. What was your idea in saying that \$65 an acre, Mr. Mulvany? A. That is what I heard. Q. When did you hear it? A. About the time he bought it. Q. Who did you hear it from? A. I don't know; he bought it several years ago. Q. Which is worth more, land that will raise alfalfa without irrigation or land that will raise alfalfa with irrigation, providing the crop production is about the same in tons? A. Why the land that will raise alfalfa without irrigation is the better. Q. For what purpose do you place \$125 an acre on the Garwood one hundred acre field? A. The market price for the land for any purpose it might be used for. Q. For raising alfalfa? A. Well, it is not very fine alfalfa land; it is not as good now as it used to be. Q. I believe you stated the other day it was rated, that little piece of upland there, as one of the best ranches in that section? A. As the largest ranch. Q. Mr. Mulvany, do you place \$125 an acre upon that Garwood ranch there of 100 acres there for alfalfa purposes? A. General purposes, alfalfa specially. Q. Isn't it good hop land? A. If you used it for that it probably would not be worth that much now. Q. I say is it not good hop land? A. I never saw it tried. Q. Do you know what good hop land is? A. I think so. Q. You have been engaged in that business? A. I have. Q. Is your



(Testimony of D. J. Mulvany.)

land similar in quality to the land of Mr. Scheiber, that he formerly owned? A. Mine is better. Q. Better land? A. Yes. Q. Have you got any market price upon your land? A. I never placed a market price on it. Q. Would you sell it? A. I will, if you will talk to me after I get through. Q. I will ask you right now. Q. We will give you \$250 an acre for it, just as it stands. Will you take it? A. Will you take the outside ranch with it? Q. We are speaking of the ranch that is similar in character to the Garwood property? A. I don't wish to sell that alone. [371] I will make a real estate deal with you now, if you want to take the 300 acres on Coon Creek. Q. I understand what you have on Coon Creek. I am speaking of your land that is similar in character to the Garwood Ranch, that land in there near the river? A. I will make you a deal if you will take the outside land; you can have it. Q. Will you take \$250 an acre for it? A. Not separate from the other, because I want them together. I don't wish to sell it now.

Redirect Examination.

Mr. MACOMBER.—Q. Mr. Mulvany, Nicolaus has been your home for a great many years? A. Yes, 35 years. Q. And you individually, are you contemplating leaving Nicolaus? A. I have been away awhile; I am anxious to get home. Q. Do you place any value on that land in reference to yourself other than market value?

Mr. HEWITT.—We object to that as immaterial, irrelevant and incompetent. A. Yes.



(Testimony of D. J. Mulvany.)

Mr. MACOMBER.—The plaintiff rests.

Mr. MILLER.—We move to strike out the testimony of this witness and of each of the other witnesses offered in rebuttal, so far as it relates to damages, upon the ground that all such testimony is irrelevant, incompetent and immaterial and part of the plaintiff's case in chief; also it is incompetent to prove market value of the land; also it is incompetent to prove or establish damages in this case, and that there was no permission obtained in any manner, shape or form nor was it asked to reopen plaintiff's case to introduce any other evidence, and it appears from the contract the property was sold as a whole and not in subdivisions or in parcels, each parcel being sold in conjunction with the other, and on the various grounds stated in our objections to the questions asked we move to strike out all of the testimony.

Defendants rest. [372]

### **Stipulation as to Original Exhibits.**

It is hereby stipulated and agreed by the plaintiff in this action, that all of the original exhibits used on the trial of this action in the District Court of the United States for the Northern District of California, may be transferred from said court to the United States Circuit Court of Appeals, for the Ninth Circuit, and used on the hearing and determination of the appeal of the plaintiff from the judgment heretofore entered in this action, with the same force and effect as if the same had been incorporated in the said Bill of Exceptions and set out in

the original and copies of the transcript to be filed in this said action.

Dated —, 1916.

LLOYD MACOMBER,  
Attorney for Plaintiff.  
A. H. HEWITT and  
ARTHUR E. MILLER,  
Attorneys for Defendants.

The photographic reproductions hereinafter attached are facsimile reproductions of certain exhibits introduced in evidence by the parties at the trial of this action. [373]



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(Endorsed:)  
No. 15701  
Garwood vs. Schelber,  
Defts. Exhibit No. I  
7/28/16 (M) Clerk.

PLAT

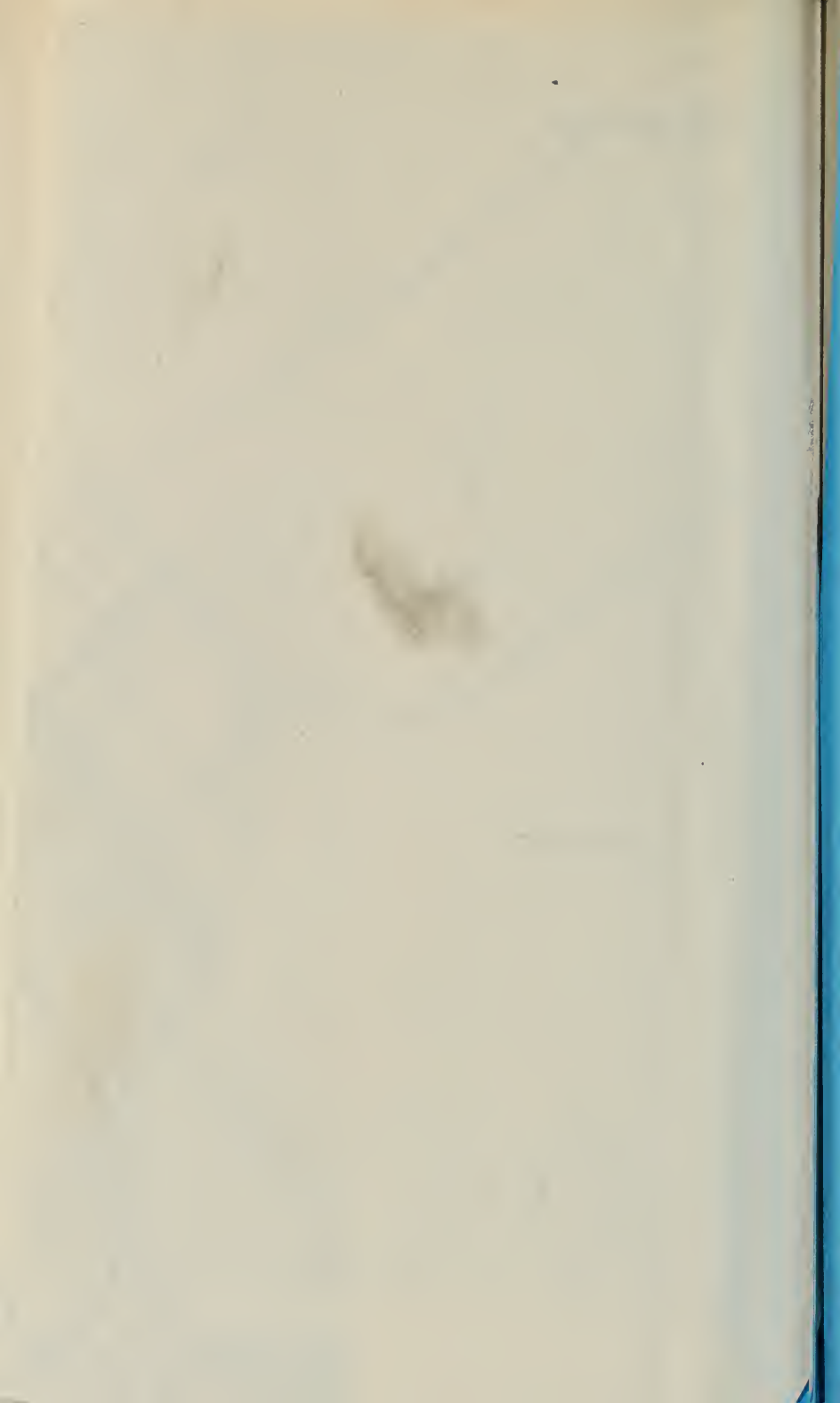
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Total 609.8 Acres









(Endorsed:)  
No. 18902  
Garwood vs. Schelber  
Defts. Michael & J.  
(M) Clerk.





Photo # 7

cut Type III  
tramping into last  
Type II in the  
vicinity

No. 15701 + 15709  
Guswood Schuler  
(Type) 13  
7/2/15 CR

Photograph # 10

Remains new of old  
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is no and certain power  
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III emerging in  
rail Type II

No. 5701 + 15709  
Guswood Schuler  
(Type) 14  
7/2/15 CR





[Title of Court and Cause.]

**Stipulation to Correctness of Bill of Exceptions.**

It is hereby stipulated and agreed by and between the attorneys for the respective parties to the within cause that the foregoing bill of exceptions is correct, and that the same may be certified and authenticated by the Honorable WILLIAM C. VAN FLEET, judge of the United States District Court for the Northern District of California.

Dated November 21st, 1916.

(Sgd.) LLOYD MACOMBER,  
Attorney for Plaintiff.

(Sgd.) A. H. HEWITT and  
ARTHUR E. MILLER,  
Attorneys for Defendants.

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[Title of Court and Cause.]

**Order Settling Bill of Exceptions.**

The Bill of Exceptions in this action was duly prepared and submitted within the time allowed by the order of the Court, and is now signed, sealed and settled as and for the Bill of Exceptions in the above-entitled cause, and the same is hereby ordered to be a part of the record in said action.

IN WITNESS WHEREOF, I have hereunto set my hand this 11th day of December, 1916.

(Sgd.) WM. H. SAWTELLE,  
Judge.

[Endorsed]: Filed December 13, 1916. Walter B. Maling, Clerk. [378]

[Title of Court and Cause.]

**Petition for Writ of Error.**

Isabelle Garwood, plaintiff in the above-entitled action, feeling herself aggrieved by the decision and judgment of the Court in favor of defendants in said above-entitled action, rendered and entered on the 18th day of February, 1916, whereby it was adjudged that plaintiff take nothing by her said action, and that the defendants have judgment against plaintiff for their costs of suit, comes now, by her attorney, Lloyd Macomber, and petitions the above-entitled court for an order allowing plaintiff to prosecute a writ of error to the Honorable the United States Circuit Court of Appeals, in and for the Ninth Circuit, under and according to the laws of the United States in that behalf made and provided, and also that an order be made fixing the amount of the security which the plaintiff shall give and furnish upon said writ of error, and that upon the giving of such security all further proceedings in this court be suspended and stayed until the determination of said writ of error by the United States Circuit Court of Appeals in and for the Ninth Circuit, and herewith plaintiff presents her assignment of errors. And your petitnoner will ever pray.

Dated August 14th, 1916.

ISABELLE GARWOOD.

ISABELLE GARWOOD,

Plaintiff.

LLOYD MACOMBER,

Attorney for Plaintiff. [379]

Receipt of Copy of the within Petition for Writ of Error, in the case of Garwood vs. Scheiber et al., No. 15,701, in the District Court of the United States, for the Northern District of California, is hereby admitted, this 17th day of August, 1916.

ARTHUR E. MILLER and  
A. H. HEWITT,

Attorneys for Defendants.

[Endorsed]: Filed Aug. 15, 1916. Walter B. Mal-  
ing, Clerk. [380]

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[Title of Court and Cause.]

**Assignment of Errors.**

Now comes Isabelle Garwood, plaintiff in the above-entitled action, by Lloyd Macomber, her attorney, and files the following as errors upon which she will rely upon her prosecution of the writ of error in the above-entitled action, viz.:

The decision and judgment of the Court in the above-entitled action is error, and said decision and judgment is against law and unjust, in this, namely, said decision is entirely unsupported by the evidence, and is contrary to the evidence, and the particulars in which said decision and judgment is contrary to the evidence, and in which the evidence is insufficient to support said decision and judgment, are as follows, to wit:

The evidence shows that the land involved in the issues of this action was sold to the plaintiff by the acre and not in gross.

The evidence shows that said land was sold to the

plaintiff, and that she bought the same, as six hundred acres at the agreed price of one hundred and twenty-five dollars per acre.

The evidence shows that said land was represented to plaintiff and sold to her as six hundred acres of first class alfalfa land, which was protected from overflow by levee; and that plaintiff bought said land upon and by reason of those representations.  
[381]

The evidence shows that not more than two hundred and fifty acres were as represented.

The evidence shows that instead of there being six hundred acres there was an absolute shortage of more than seventy acres.

The evidence shows that instead of their being six hundred acres to said land of a character best adapted to the raising of alfalfa, there were only four hundred and fifty acres which could be used for any agricultural purpose whatever, and that there was not more than four hundred and fifty acres of said land which had any agricultural or commercial value. The evidence shows that not more than four hundred and fifty acres of said land had ever been used by defendants for agricultural purposes, and that there were not more than four hundred and fifty acres which could be used for any agricultural purposes.

The evidence shows that of the four hundred and fifty acres which might be used for agricultural purposes, not more than two hundred and fifty acres could be used for growing alfalfa, and that the remaining two hundred acres was subject to overflow

to such an extent that the raising of alfalfa thereon was a commercial impossibility.

The evidence shows that of the four hundred and fifty acres of said land which plaintiff actually received which was capable of being used for agricultural purposes, the two hundred acre portion thereof which was subject to overflow was not worth more than sixty dollars per acre, and that plaintiff was damaged to the extent of sixty-five dollars per acre for each and every one of said two hundred acres.

The evidence shows that defendants and their agents took plaintiff upon said land, but that in so doing they were careful to show her only the portion thereof which could be used for agricultural purposes, and purposely refrained from showing her the swamp land outside of the old levee, and purposely refrained from showing her that more [382] than seventy acres of said land was at that time beneath the channel of a navigable river, and for that reason not their property and impossible of being conveyed by them, and said defendants and their agents purposely refrained from advising plaintiff of the fact that not more than four hundred and fifty acres of said land could be used for any agricultural purpose.

The evidence shows that plaintiff has been damaged in the sum of more than twenty-one thousand dollars which she has had to pay in reclamation assessments to reclaim and protect from overflow land which in said sale to her was represented to her as being free from overflow.

The evidence shows that notwithstanding this ex-



penditure of money for reclamation purposes plaintiff still has only two hundred and fifty acres of land which is as was represented to her.

The evidence shows that said land was represented to plaintiff as being subirrigated (meaning self-irrigated), and that no irrigation would be necessary for the raising of alfalfa; and the evidence shows that the same two hundred acres which were hereinbefore stated to be worth but sixty dollars per acre, that is to say, the two hundred acres at the southeasterly most end of the tract, has so little subirrigation that it is not commercially practicable to attempt to raise alfalfa thereon without artificial irrigation.

The evidence shows that the plaintiff, at the time the said land was sold to her, was a woman without any business experience or understanding, and without any experience or understanding of any character in reference to land or farming, and without any experience or understanding whatever in reference to matters appertaining to said land or the purchase thereof, and that she fully believed and relied upon the representations of defendant's agents; and the evidence shows that these facts were well known to defendants' said agents.

The evidence shows that in purchasing said land plaintiff was [383] guided by and acted upon the advice and counsel of a friend and adviser, one F. I. Ramos, with whom plaintiff occupied a confidential relationship—with whom she was engaged to be married—which fact was at all times well known to defendants' agents who represented defendants in said sale; and the evidence shows that, in so far

as the selection of said land was concerned, said F. I. Ramos was the confidential agent of the plaintiff, which said fact was at all times well known to defendants' said agents.

The evidence does not show that said F. I. Ramos was the agent of the plaintiff for any purpose whatsoever other than to advise her in respect to what land she should or should not buy; and the precise extent of the power and agency of said F. I. Ramos for the plaintiff was well known to the defendants' said agents.

The evidence shows that defendants' said agents bribed and corrupted plaintiff's said confidential agent and adviser, said F. I. Ramos, by secretly paying to said F. I. Ramos the sum of fifteen hundred dollars, and that by reason of the said bribery and corruption of plaintiff's said betrothed and confidential agent and adviser, plaintiff was misadvised and misled to her prejudice and financial loss and damage in the sum and amount prayed for in her complaint in said action.

The evidence shows that the said land was represented to plaintiff as being "River Bottom" land, and as being subirrigated; and the evidence shows that not more than the aforesaid two hundred and fifty acres were of that character.

The evidence shows that the said land is of the following character and value, and was of the following character and value at the time of said sale, that is to say:

(1) The two hundred and fifty acres of said land lying immediately east and south of the old levee is

of a character practically the same as was represented by said defendants' agents, and that said [384] two hundred and fifty acres was at said time worth not more than the price plaintiff paid for it, to wit, one hundred and twenty-five dollars per acre.

(2) That the remainder of said land lying at the southeasterly end of the said tract were not as represented by defendants' said agents, either in respect to overflow, or in respect to subirrigation, or in respect to the character of the soil, and said two hundred acres was at the time of said sale worth not more than sixty dollars per acre.

(3) That the remainder of said land, to wit, all of that which lies outside, or northwest of the old levee, is not as represented in any respect whatsoever, and that the sixty or seventy acres of land which was actually there, and which plaintiff actually received, is useless for any agricultural purpose, and is commercially valueless.

The complaint in this action alleges that the said land in question was represented and sold to plaintiff as a certain specified number of acres of a certain specified character of land at a certain specified price per acre. The complaint alleges that there are certain acres missing, that is, that there is an absolute shortage from the number of acres represented and agreed upon. The complaint also complains and alleges that a large number of acres of the tract are not as represented, to such an extent that those acres are unfit and unusable for any agricultural purpose and commercially worthless. The complaint further complains and alleges that a very large portion of the

land, about two hundred acres, is not as was represented, and, while not agriculturally valueless, is not worth more than sixty dollars per acre. The remaining portion of the tract, about two hundred and fifty acres, is not mentioned in the complaint, it being thereby admitted that that portion of the land is practically [385] in accord with the representations which were made to plaintiff at the time of the sale. The complaint in this action was framed, and seeks to recover, upon the theory that the plaintiff is entitled to compensation, at the agreed price per acre, for all acres missing and for all acres commercially worthless, and that plaintiff is also entitled to compensation and reimbursement to the extent to which the other acres complained of fall below the character and quality represented to the plaintiff at the time of the sale. One of the defenses interposed by the defendants was to the effect that, disregarding any representations made by the sellers, and ignoring any agreed price per acre which there might have been between seller and buyer, if it could be proven that the land in its entirety, including that portion uncomplained of, was worth the money plaintiff paid for the land, the plaintiff had received the equivalent of the money which she had parted with, and had, therefore, suffered no damage. Over the objection and exception of the plaintiff the Court allowed the defendants to put in evidence, outside of the contract between the parties, to the effect that the land in its entirety, including that portion uncomplained of in the complaint, was worth the full amount which plaintiff had parted with under the transaction. The



Court allowed a number of witnesses to testify for the defendants, that the land in its entirety was worth the sum of seventy-five thousand dollars which plaintiff had paid. This action of the Court in allowing that testimony is hereby assigned as error, and the text of the evidence and proceedings had in respect to that testimony and ruling of the Court are as follows:

Questions asked Charles F. Silva:

Q. Now, Mr. Silva, do you know what the market value of that real property, the Scheiber Brothers' ranch, bought by Miss Garwood, [386] was on the first of November, 1911?

Mr. MACOMBER.—One moment. What do you refer to, the entire land?

Mr. MILLER.—Yes.

Mr. MACOMBER.—You asked him if he knew?

A. Yes, I do.

Mr. MILLER.—Q. What was the market value?

Mr. MACOMBER.—We object to the question; we object to any testimony being taken as to the ranch in its entirety, upon the ground that it is incompetent, immaterial and irrelevant, and not within the issues of this case, and has nothing to do with this controversy.

The COURT.—The objection is overruled.

Mr. MACOMBER.—We note an exception.

### EXCEPTION No. 3.

(Questions asked G. A. WESSING.)

Q. Did you know the value of the Scheiber property or the Garwood property in 1911? A. Yes.

Q. Taking the ranch as it stood there as a whole at



that time, what was its valuation?

Mr. MACOMBER.—Now, one moment, if your Honor please, in order to save time, it will be understood that my objection made yesterday to the value of the ranch in its entirety or the value of the property not described in the complaint will run to all these questions?

The COURT.—Yes.

Mr. MACOMBER.—Subject to the same ruling?

The COURT.—Yes.

Mr. MACOMBER.—I note an exception.

#### EXCEPTION No. 7.

(Questions asked ISABELLE GARWOOD, the plaintiff.)

Q. Now, Miss Garwood, about three months after you got this place [387] did Mr. Charles Silva offer to take it off your hands at the price you paid for it?

Mr. MACOMBER.—We object to that as immaterial, irrelevant, and incompetent and nothing to do with this case whatever; it does not make any difference what offer was made to her.

The COURT.—When was that?

Mr. MILLER.—About three months after the purchase of the property.

The COURT.—I will overrule the objection.

Mr. MACOMBER.—We note an exception.

#### EXCEPTION No. 2.

(Questions asked CHARLES F. SILVA.)

Mr. MILLER.—Q. Mr. Silva, did you on the occasion of a visit to the ranch with Miss Garwood, shortly after her purchase of the Scheiber property,

offer to pay her \$75,000 for that ranch?

Mr. MACOMBER.—We object to the question on the ground that it is immaterial, irrelevant, and incompetent.

The COURT.—The objection is overruled.

Mr. MACOMBER.—Exception.

EXCEPTION No. 3.

A. Yes.

Irrelevant documentary evidence allowed by the Court:

Mr. HEWITT.—We now offer in evidence a certified copy of the judgment-roll in the case of Isabelle Garwood vs. L. M. Curtis et al., a record of the Superior Court of the County of Sutter, State of California, together with all endorsements on the several papers constituting the judgment-roll, it being an action of plaintiff to correct and quiet the title to the property which she purchased of the defendants in this action.

The COURT.—Who are the parties defendant?  
[388]

Mr. HEWITT.—There are about forty or fifty of them, I should judge, if the Court please. It was a proceeding brought under Sections 749, 750 and 751 of our Code, and the object of introducing it is for two purposes; first, the contract entered into between plaintiff and defendants provides if there are any defects in the title that they will be rectified, if your Honor please, to the extent of \$250 expenses toward carrying it out; the second is that the complaint in this action is a verified complaint, verified by plaintiff herself, and shows which she says under

her own verification she is the owner of; that is, it gives a description of it.

Mr. MACOMBER.—Now, if your Honor please, we object to this upon the ground that it is immaterial, irrelevant, and incompetent, and has nothing to do with this case.

The COURT.—It may be received in evidence.

Mr. MACOMBER.—We note an exception.

#### EXCEPTION No. 5.

Mr. HEWITT.—I now offer in evidence a certified copy of the warrant issued by reclamation district No. 1001, bearing date December 30, 1911, for the sum of \$5,106.43, together with all endorsements on the warrant in question, the warrant being endorsed, "Pay to the order of Isabelle Garwood, Levee District No. 6, by J. J. McNamara, Chairman, Julius Rolfe, Clerk," also endorsed "Isabelle Garwood"; also endorsed a second time "Isabelle Garwood and C. E. Williams."

Mr. MACOMBER.—We object to this being introduced in evidence upon the ground it is immaterial, irrelevant and incompetent, and has nothing whatever to do with this case; but we will stipulate that it be admitted in evidence if counsel be fair on his part and stipulate that it had nothing to do with the purchase price; that [389] the defendants received the \$75,000 and the plaintiff has been assessed subsequent to that time \$26,000 to keep the land free from overflow, and this amounts merely to a reduction, making the assessment \$21,000;—if counsel will stipulate that, I will withdraw my objection.

Mr. HEWITT.—We will make no stipulation to

that effect because of the very nature of the assessment.

The COURT.—The objection is overruled, and it may be received.

(The document is marked Defendant's Exhibit "H.")

Mr. MACOMBER.—We note an exception.

#### EXCEPTION No. 6.

At the close of the afternoon session of the court on Wednesday the 28th day of July, 1915, and while this action still pending and yet unfinished, and while there were still a number of witnesses to be examined, the Honorable Wm. H. Sawtelle, Judge presiding, stated to respective counsel that he would be compelled to depart for Arizona upon the following day, and would not be able to hear any further testimony in said action, and he then and there requested that counsel enter into a stipulation to the effect that all remaining testimony be taken by a commissioner selected for that purpose, and that after the remaining testimony should be concluded it should be certified to him, together with the entire record to his home in Arizona, and that he could communicate his decision in the action to the Honorable Judge Van Fleet who would thereupon cause judgment to be entered in said cause with the same force and effect as though he, himself, were personally present. Such a stipulation was duly agreed upon and entered into by the respective parties; and counsel for plaintiff then and there stated to the Court that he desired the Court to render findings when making his [390] decision, and then and there counsel for plaintiff re-

quested the said Court, Honorable Wm. H. Sawtelle, Judge presiding, to make findings of fact at the time he rendered his decision in said action. The said Court, Honorable Wm. H. Sawtelle, Judge presiding, then and there refused to grant the request of plaintiff, and stated that he would not make findings of fact in said action, because of the fact that the request for findings had not been made before the commencement of the trial. To the Court's said action in refusing the request of plaintiff for findings of fact the plaintiff then and there duly excepted. The action of the Court in refusing to make findings of fact, and the failure and refusal of the Court to thereafter make findings of fact and conclusions of law, is hereby assigned as error by the plaintiff in this action.

WHEREFORE the said plaintiff prays that the judgment in favor of defendants and against the plaintiff herein be reversed, and that said District Court of the United States, in and for the Northern District of California, Second Division, be directed to grant a new trial in said action.

Dated Aug. 14th, 1916.

LLOYD MACOMBER,  
Attorney for Plaintiff.

Receipt of Copy of the Within Assignment of Errors in the Case of Garwood vs. Scheiber et al., No. 15,701, in the District Court of the United States, for the Northern District of California, is hereby admitted, this 7th day of August, 1916.

ARTHUR E. MILLER and  
A. H. HEWITT,  
Attorneys for Defendants.



[Endorsed]: Filed Aug. 15, 1916. Walter B. Mal-  
ing, Clerk. [391]

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[Title of Court and Cause.]

**Order Allowing Writ of Error.**

Upon motion of Lloyd Macomber, attorney for the plaintiff in the above-entitled action, and upon the filing of the petition for writ of error and assignment of errors.

IT IS HEREBY ORDERED that a writ of error as prayed for in said petition be allowed and that the amount of the bond to be given by the plaintiff upon said writ of error be and the same is hereby fixed at the sum of one thousand dollars, and that upon the giving of said bond all further proceedings in this court be suspended, stayed, and superseded, pending such determination of said writ of error by the United States Circuit Court of Appeals for the Ninth Circuit.

Dated August 15th, 1916.

WM. C. VAN FLEET,  
Judge.

Receipt of Copy of the within Order allowing Writ of Error, in the Case of Garwood vs. Scheiber et al., No. 15,701, in the District Court of the United States for the Northern District of California, is hereby admitted this 17th day of August, 1917.

ARTHUR E. MILLER and  
A. H. HEWITT,  
Attorneys for Defendants.

[Endorsed]: Filed Aug. 15, 1916. Walter B. Mal-  
ing, Clerk. [392]

[Title of Court and Cause.]

MASSACHUSETTS BONDING AND INSURANCE COMPANY, HOME OFFICE, BOSTON, MASSACHUSETTS.

**Bond on Writ of Error.**

WHEREAS, heretofore, to wit, on the 18th day of February, 1916, judgment was made and entered in the above-entitled action, against the plaintiff, and in favor of the defendants therein named, and judgment for costs of suit was, at the same time, rendered against the plaintiff in the sum of something less than eight hundred dollars, to wit, approximately seven hundred and ninety dollars; and

WHEREAS, the plaintiff is dissatisfied with the said judgment of the Court and desires to prosecute a writ of error to the United States Circuit Court of Appeals and has procured from the Court an order directing that a writ of error issue in said action, staying proceedings therein, and directing that plaintiff file with the clerk of the court a bond, in the sum of one thousand dollars;

NOW, THEREFORE, the undersigned, in consideration of the premises, does hereby undertake and promise, upon the part of said plaintiff in error, that said plaintiff in error will pay whatever costs are legally incurred by the defendants in error in said above-entitled action, upon said writ of error; and does further promise and undertake to the effect that, if [393] the said judgment in said action, as heretofore rendered, should be affirmed, said plaintiff in error will fully pay the judgment for costs heretofore

rendered against her and in favor of the defendants in said above-entitled action; and, to the end herein stated, does undertake and is firmly bound to pay all such sums, not, however, exceeding the sum of one thousand (1,000) dollars.

Dated at San Francisco, Cal., this 16th day of August, 1916.

[Seal] MASSACHUSETTS BONDING & INSURANCE CO.

By JOHN H. ROBERTSON and  
S. M. PALMER,

Attorneys in Fact.

State of California,

City and County of San Francisco,—ss.

On this 16th day of August, A. D. 1916, before me, H. B. Denson, a Notary Public in and for the city and county of San Francisco, personally appeared John H. Robertson, Attorney in Fact, and S. M. Palmer, Attorney in Fact, of the Massachusetts Bonding and Insurance Company to me personally known to be the individuals and officers described in and who execute the within instrument, and they each acknowledged the execution of the same, and being by me duly sworn, severally and each for himself, depose and saith that they are the said officers of the company aforesaid, and that the seal affixed to the within instrument is the corporate seal of said company, and that the said corporate seal and their signatures as such officers were duly affixed and subscribed to the said instrument by the authority and direction of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office in the city and county of San Francisco the day and year first above written.

[Seal]

H. B. DENSON,  
Notary Public in and for the City and County of San Francisco, State of California. [394]

Approved:

WM. H. HUNT,  
Judge.

[Endorsed]: Filed August 16, 1916. Walter B. Maling, Clerk. [395]

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[Title of Court and Cause.]

**Praeipce for Transcript of Record.**

To the Clerk of Said Court:

Sir: Please prepare transcript on writ of error the same to constitute the following papers:—

Bill of Exceptions.

Complaint.

Amendment to Complaint.

Demurrer to Complaint.

Order Overruling Demurrer.

Answer to Complaint.

Stipulation Waiving Jury, and that case be tried  
by Court Without Jury.

Order Entering Judgment.

Stipulation to Bill of Exceptions and that Bill may  
be Settled and Allowed.

Assignment of Errors.

Order Settling Bill of Exceptions.

Stipulation as to Original Exhibits.

Dismissal of Action as to Frances Scheiber, Emma  
Scheiber, and Anna Scheiber.

Petition for Writ of Error.

Writ of Error.

Bond on Writ of Error. [396]

Order Allowing Writ of Error.

Citation on Writ of Error.

Return to Writ of Error.

Clerk's Certificate to Judgment-roll.

Clerk's Certificate to Transcript of Record.

LLOYD MACOMBER,

Attorney for Plaintiff.

[Endorsed]: Filed Jan. 12, 1917. W. B. Maling,  
Clerk. By J. A. Schaertzer, Deputy Clerk. [397]

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[Title of Court and Cause.]

**Clerk's Certificate to Record on Writ of Error.**

I, Walter B. Maling, Clerk of the District Court of the United States, in and for the Northern District of California, do hereby certify the foregoing three hundred ninety-seven (397) pages, numbered from 1 to 397, inclusive, to be full, true and correct copies of the record and proceedings as enumerated in the praecipe for transcript of record, filed in the above entitled cause, as the same remain on file and of record in the office of the clerk of said District Court, and that the same constitute the return to the annexed writ of error.

I further certify that the cost of the foregoing transcript of record is \$230.60; that said amount was



paid by plaintiff; and that the original writ of error and citation issued herein are hereunto annexed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said District Court this 13th day of January, A. D. 1917.

[Seal]

WALTER B. MALING,

Clerk.

By J. A. Schaertzer,

Deputy Clerk. [398]

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### **Writ of Error.**

UNITED STATES OF AMERICA,—ss.

The President of the United States, To the Honorable, the Judges of the District Court of the United States for the Northern District of California, GREETING:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court, before you, or some of you, between Isabelle Garwood, plaintiff in error and Joseph Scheiber, Maurice Scheiber and John Scheiber, Defendants in Error, a manifest error hath happened to the great damage of the said Isabelle Garwood plaintiff in error, as by her complaint appears.

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court

of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the city of San Francisco, in the State of California, on the 15th day of September next, in the said Circuit Court of Appeals, to be then and there held, that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

WITNESS, the Honorable EDWARD D. WHITE, Chief Justice of the United States, the 16th day of August, in the year of our Lord One Thousand Nine Hundred and sixteen.

[Seal] WALTER B. MALING,  
Clerk of the District Court of the United States, for  
the Northern District of California.

Allowed by

WM. C. VAN FLEET.

Judge. [399]

Service of within Writ and receipt of a copy thereof is hereby admitted this 17th day of August, 1916.

ARTHUR E. MULLER and  
A. H. HEWITT,

Attorneys for Defendants.

The answer of the Judges of the Circuit Court of the United States of the Ninth Judicial Circuit, in and for the Northern District of California.

The record and all proceedings of the plaint whereof mention is within made, with all things touching the same, we certify under the seal of our

said court, to the United States Circuit Court of Appeals for the Ninth Circuit, within mentioned at the day and place within contained, in a certain schedule to this writ annexed as within we are commanded.

By the Court.

[Seal]

WALTER B. MALING,  
Clerk.

By J. A. Schaertzer,  
Deputy Clerk.

[Endorsed]: No. 15701. District Court of the United States Northern District of California. Isabelle Garwood, Plaintiff in Error, vs. Joseph Scheiber et al., Defendants in Error. Writ of Error. Filed Aug. 26, 1916. Walter B. Maling, Clerk. By \_\_\_\_\_, Deputy Clerk.

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**Citation on Writ of Error.**

UNITED STATES OF AMERICA,—ss.

The President of the United States, To Joseph Scheiber, Maurice Scheiber and John Scheiber,  
**GREETING:**

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the city of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to a writ of error duly issued and now on file in the clerk's office of the United States District Court for the Northern District of California wherein Isabelle Garwood is plaintiff in error, and you are defendants in error, to show

cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable WILLIAM C. VAN FLEET, United States District Judge for the Northern District of California, this 16th day of August, A. D. 1916.

WM. C. VAN FLEET,  
United States District Judge. [400]

Service of the within Citation on Writ of Error and receipt of copy thereof is hereby admitted this 17th day of August, 1916.

ARTHUR E. MILLER and  
A. H. HEWITT,

Attorneys for Defendants.

[Endorsed]: No. 15701. United States District Court for the Northern District of California. Isabelle Garwood, Plaintiff in Error, vs. Joseph Scheiber et al., Defendants in Error. Citation on Writ of Error. Filed Aug. 26, 1916. Walter B. Maling, Clerk.

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[Endorsed]: No. 2924. United States Circuit Court of Appeals for the Ninth Circuit. Isabelle Garwood, Plaintiff in Error, vs. Joseph Scheiber, Maurice Scheiber and John Scheiber, Defendants in Error. Transcript of Record. Upon Writ of Error

to the Southern Division of the United States District Court of the Northern District of California, Second Division.

Filed January 13, 1917.

F. D. MONCKTON,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

By Paul P. O'Brien,  
Deputy Clerk.

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[Title of Court and Cause.]

**Order Extending Time to and Including October 16,  
1916, to File Record and Docket Cause.**

Good cause appearing therefor, it is hereby ordered that the plaintiff in error may have to and including October 16, 1916, within which to file the record on writ of error and docket the cause in the United States Circuit Court of Appeals for the Ninth Circuit.

Dated September 15, 1916.

WM. W. MORROW,  
Judge, U. S. Circuit Court of Appeals, for the Ninth  
Circuit.

[Endorsed]: No. ——. United States Circuit Court of Appeals for the Ninth Circuit. Order Under Rule 16 Enlarging Time to Oct. 16, 1916, to File Record Thereof and to Docket Case. Filed Sep. 22, 1916. F. D. Monckton, Clerk.



[Title of Court and Cause.]

**Order Extending Time to and Including November 16, 1916, to File Record and Docket Cause.**

Good cause appearing therefor, it is hereby ordered that the plaintiff in error, Isabelle Garwood, may have to and including the 16th day of November, 1916, within which to file the record on writ of error in the above-entitled cause, and docket the cause in the United States Circuit Court of Appeals for the Ninth Circuit.

Dated October 10th, 1916.

WM. B. GILBERT,

Judge of the United States Circuit Court of Appeals  
for the Ninth Circuit.

[Endorsed]: No. ——. United States Circuit Court of Appeals for the Ninth Circuit. Order Under Rule 16 Enlarging Time to Nov. 16, 1916 to File Record Thereof and to Docket Case. Filed Oct. 10, 1916. F. D. Monekton, Clerk.

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[Title of Court and Cause.]

**Order Extending Time to and Including December 16, 1916, to File Record and Docket Cause.**

Good cause appearing therefore, it is hereby ordered that the plaintiff in error, may have to and including December 16th, 1916, within which to file the record on Writ of Error, and docket the cause in the United States Circuit Court of Appeals, for the Ninth Circuit.

ERSKINE M. ROSS,

United States Circuit Judge.

Dated November 14th, 1916.

[Endorsed]: No. ——. United States Circuit Court of Appeals for the Ninth Circuit. Order Under Rule 16 Enlarging Time to Dec. 16, 1916, to File Record Thereof and to Docket Case. Filed Nov. 14, 1916. F. D. Monckton, Clerk.

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[Title of Court and Cause.]

**Order Extending Time to and Including January 16, 1917, to File Record and Docket Cause.**

Good cause appearing therefor, it is hereby ordered that the plaintiff in error may have to and including the 16th day of January, 1917, within which to file the record and docket the cause in the United States Circuit Court of Appeals for the Ninth Circuit upon writ of error in the above-entitled action.

Dated December 14, 1916.

WM. B. GILBERT,  
Judge.

[Endorsed]: No. ——. United States Circuit Court of Appeals for the Ninth Circuit. Order Under Rule 16 Enlarging Time to January 16th, 1917, to File Record Thereof and to Docket Case. Filed Dec. 16, 1916. F. D. Monckton, Clerk.

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[Title of Court and Cause.]

**Order Extending Time to and Including January 16, 1917, to File Record and Docket Cause.**

Good cause appearing therefor it is hereby ordered that the plaintiff in error may have to and including the 16th day of January, 1917, within which to file the

record and docket the cause in the United States Circuit Court of Appeals for the Ninth Circuit upon writ of error in the above-entitled action.

Dated Dec. 11th, 1916.

ERSKINE M. ROSS,  
Circuit Judge.

[Endorsed]: No. ——. United States Circuit Court of Appeals for the Ninth Circuit. Order Under Rule 16 Enlarging Time to January 16th, 1917, to File Record Thereof and to Docket Case. Filed Dec. 15, 1916. F. D. Monckton, Clerk.

No. 2924. United States Circuit Court of Appeals for the Ninth Circuit. Garwood vs. Scheiber et al., Five Orders Under Rule 16 Enlarging Time to January 16th, 1917, to File Record Thereof and to Docket Case. Refiled Jan. 15, 1917. F. D. Monckton, Clerk.